

Appendix Six

In The Matter Of:
Tricia Wachsmuth v.
City of Powell, et al.

Marissa Torczon
November 22, 2010

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WYOMING
3 -----
4 TRICIA WACHSMUTH,)
5 Plaintiff,)
6 vs.) NO. 10-CV-041J
7)
8 CITY OF POWELL, AND IN THEIR)
9 INDIVIDUAL CAPACITY, TIM)
10 FEATHERS, CHAD MINER, MIKE)
11 CHRETIEN, ROY ECKERDT, DAVE)
12 BROWN, MIKE HALL, BRETT LARA,)
13 MATT MCCASLIN, ALAN KENT, MAT)
14 DANZER, OFFICER BRILAKIS, LEE)
15 BLACKMORE, CODY BRADLEY, KIRK)
16 CHAPMAN, JOHN DOES #1-#4,)
17 Defendants.)
18
19 DEPOSITION OF MARISSA TORCZON
20 9:00 a.m., Monday, November 22, 2010
21
22 Pursuant to notice, the deposition of MARISSA
23 TORCZON was taken in behalf of Plaintiff in accordance
24 with the applicable Federal Rules of Civil Procedure at
25 270 North Clark, Powell, Wyoming, before Vonni R. Bray,
Registered Professional Reporter and Notary Public of
the State of Montana.

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1 APPEARANCES
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Also Present: Tim Feathers

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Direct Examination by Mr. Gosman

1 MARISSA TORCZON,
2 having been first duly sworn, testified as follows:
3 DIRECT EXAMINATION
4 BY MR. GOSMAN:
5 Q. Good morning, Ms. Torczon. Before we begin,
6 I have a few questions that I'll ask you about your
7 understanding and experience with depositions, which is
8 what we're here for today. Have you ever given a
9 deposition before?
10 A. No.
11 Q. Have you spoken with either of the attorneys
12 here representing the City and the various defendants
13 about the deposition that will take place today?
14 A. Yes.
15 Q. And did they explain to you that I will be
16 asking questions, and you will be required to answer
17 those questions.
18 A. Yes.
19 Q. Okay. Your testimony today is taken under
20 oath. And so you're required to answer truthfully the
21 questions that are asked; do you understand that?
22 A. Yes.
23 Q. And are you under -- on any medication or do
24 you have any illness or anything else that would affect
25 your ability to truthfully answer the questions today?

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Direct Examination by Mr. Gosman

1 A. No.
2 Q. If you don't understand a question that I
3 ask, it's really quite important that you seek
4 clarification of the question before we go forward;
5 will you agree to do that?
6 A. Yes.
7 Q. And we can take a break at any time, but we
8 do not take a break when a question is pending.
9 A. Okay.
10 Q. Those are the basic rules.
11 A. Okay.
12 Q. Ma'am, if you could recite your full name for
13 the record, please.
14 A. Marissa Renee Torczon
15 Q. And what is your current address?
16 A. 434 South Gilbert Street in Powell, Wyoming.
17 Q. And did you grow up here in Powell?
18 A. No, I did not.
19 Q. Where did you grow up?
20 A. Hillsboro, Oregon.
21 Q. And did you graduate from high school there?
22 A. No, I did not.
23 Q. Where did you graduate from high school?
24 A. Cody, Wyoming.
25 Q. And what year was that?

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Direct Examination by Mr. Gosman

1 A. 2002.
2 Q. And what did you do after you graduated from
3 high school in terms of your education or your job
4 experience?
5 A. In terms of education, I did not go to
6 college. And at that time, I don't recall if I either
7 started working at the Econolodge first or First
8 National Bank.
9 Q. Okay. Well, let's take a minute and go
10 through your work history, briefly. Describe for me
11 where you've worked, approximately how long, and why
12 you left.
13 A. I worked at a Shalimar Restaurant in Oregon.
14 That first job I had as a busgirl. That job I quit
15 because we moved to Wyoming.
16 I worked -- it was the Econolodge, Moose
17 Creek in Cody, Wyoming. And I took vacation to see my
18 family in Oregon, and it was seasonal, so that's why I
19 didn't go back the next year.
20 I then worked for First National Bank in
21 Cody, and sometimes worked here in the Powell branch.
22 I had my daughter, and then when I was pregnant with my
23 son is when I left.
24 After First National, I went back and worked
25 at the Econolodge for a little bit longer, just

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Direct Examination by Mr. Gosman

1 seasonal, again. And then I baby-sat a friend's child
2 for a year before I came and applied for the Powell
3 Police Department.
4 Q. And when was that?
5 A. In 2007.
6 Q. And have you been working for the Powell
7 Police Department since?
8 A. Yes, since May of 2007.
9 Q. What is your current position with the Powell
10 Police Department?
11 A. Full-time Dispatch II.
12 Q. And what was your position in November of
13 2009 -- I'm sorry, February of 2009?
14 A. February of 2009, I was full-time and
15 Dispatch I.
16 Q. What are the duties of a Dispatch I position?
17 A. The basic duties is we do window traffic,
18 recordkeeping. We take calls from citizens, either at
19 the window, by phone, 911. We dispatch those calls. I
20 dispatch officers, EMS, city personnel, and then other
21 duties as assigned.
22 Q. And what are the duties of a Dispatch II
23 position?
24 A. They're the same as a Dispatch I, except you
25 have other duties that are specifically assigned to

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1 you.
2 Q. Such as?
3 A. Such as we get pawn tickets. I'm the one
4 that files those. We have another dispatcher that
5 takes care of all of our NCIC protocol. We just have
6 more specific duties that we're supposed to do. And
7 then also, we are training officers for dispatch.
8 (Exhibit 10 identified)
9 BY MR. GOSMAN:
10 Q. Let me go ahead and turn your attention to
11 Exhibit 10. Have you seen that document before?
12 A. Yes.
13 Q. What is it?
14 A. It's the notes I took.
15 Q. It's notes you took of what?
16 A. The meeting before they went to the scene.
17 Q. And that would have been the meeting that is
18 the subject of this lawsuit, I assume, correct?
19 MS. WESTBY: Object to the form of the
20 question.
21 MR. GOSMAN: Let me strike that. I'll start
22 all over.
23 BY MR. GOSMAN:
24 Q. Was this meeting held on the 24th of
25 February, 2009, do you know?

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1 A. I can't recall the exact date.
2 Q. Was this the meeting that was held in order
3 to plan the entry into the Wachsmuth residence?
4 A. I can't say for sure if that's -- it was the
5 meeting that was -- that they had all the officers come
6 together before they went, so -- As far as I know,
7 there was no other meetings, so I can't recall if this
8 is the exact --
9 Q. But it was a meeting that concerned the entry
10 --
11 A. Yes.
12 Q. -- into the Wachsmuth home?
13 A. Yes.
14 Q. And when -- how did it come to pass that you
15 were invited to attend this meeting?
16 A. I was called by Sergeant Kent to come and
17 take notes and manage the radio.
18 Q. And what was managing the radio about? What
19 did you need to do there?
20 A. Any time we have more than five officers, we
21 have to have two dispatchers on duty. And so we went
22 to a different radio channel that I was to monitor in
23 case the officers needed anything. And so the other
24 dispatcher having to do 911 calls, as well as our
25 regular duties and listen for the officers on the other

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1 Q. And did you have any further discussion with
2 Officer Kent when you arrived at the police station?
3 A. Not that I recall.
4 Q. What did you understand your job to be, then,
5 during that meeting?
6 A. Take notes of what was said. That's all that
7 I recall.
8 Q. Did he want you to keep those notes and give
9 them to him after the meeting was over?
10 A. I don't recall.
11 Q. The notes were produced as part of the
12 investigating file in this case. Did you turn them
13 over to someone after the meeting?
14 A. Not that I remember.
15 Q. Did you leave them there?
16 A. I believe I left them in dispatch, but I
17 don't recall where I left them.
18 Q. And did you take notes, to the best of your
19 ability in terms of accounting for what took place in
20 the meeting that evening?
21 A. The best of my ability, since I've never
22 taken notes like this before.
23 Q. Let's go ahead and start with the top of
24 Exhibit 10. There's an entry there. "Brown, Brilakis,
25 Blackmore," and then off to the side, the word

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1 station.
2 Q. Do you remember approximately what time it
3 was that Officer Kent approached you about coming to
4 this meeting?
5 A. I do not.
6 Q. Was it after dark?
7 A. I would say it was more evening, but I can't
8 remember if it was dark at that time.
9 Q. And were you working here at the station at
10 that time?
11 A. No.
12 Q. You were at home?
13 A. Yes.
14 Q. What -- did you speak with Officer Kent on
15 the phone?
16 A. Yes.
17 Q. What did he say to you?
18 A. I don't recall. I just remember him asking
19 me to come in, and that's about it that I recall of
20 what the phone conversation went.
21 Q. Were you on overtime when you came down?
22 A. Yes.
23 Q. As far as you know, were the other officers
24 who came down that evening on overtime?
25 A. Not that I know of.

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1 "garage." Did you make all of the entries that are on
2 these notes?
3 A. Everything except at the end. There's one
4 part, it doesn't look like my handwriting, and I'm not
5 sure what it means.
6 Q. And what is that?
7 A. Looks like S-U-B near the very bottom.
8 Q. Of the first page of the exhibit?
9 A. Of the first page.
10 Q. S-U-B?
11 A. That's what it looks like.
12 Q. Okay. That is not your notation?
13 A. That does not look like my handwriting.
14 Q. Okay. Do you recognize the handwriting?
15 A. No.
16 Q. Do you know what it means?
17 A. No.
18 Q. All right. Let's go back up to the top.
19 What -- why did you write the phrase, "Brown, Brilakis,
20 Blackmore" and then the term "garage"?
21 A. With that, I was trying to put, as they were
22 talking, where the officers would be. But I can't
23 guarantee you 100 percent that that's where they went.
24 Because as fast as they were talking, I was trying to
25 keep up.

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Direct Examination by Mr. Gosman

1 Q. All right. So is this one of the first
2 things that you noted when you arrived at the police
3 station, that Brown, Brilakis and Blackmore would be
4 going to the garage?
5 A. I don't recall.
6 Q. Well, let's back up for a moment and let me
7 ask you, are the entries in this exhibit more or less
8 in order?
9 MR. THOMPSON: Objection as to form.
10 Go ahead.
11 THE WITNESS: Okay. They're not in order. I
12 know how I take my notes, and I'll start in one part
13 and then add stuff.
14 BY MR. GOSMAN:
15 Q. Do you normally start at the top?
16 A. Normally, but that's above the first top of
17 the line of the page, so that looks like more stuff I
18 would have added afterwards.
19 Q. So this was a lined page? I don't see lines
20 on my copy. Was it a lined page?
21 A. Yes.
22 Q. When you arrived at the police station, who
23 was there? Well, let me make this a little easier, was
24 Officer Kent there?
25 A. I believe so.

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1 Q. Was Officer Chretien there?
2 A. I believe so.
3 Q. And were the other officers that are listed
4 on the list that is contained in the left-hand column
5 of Exhibit 10 present at that time?
6 A. No.
7 Q. Did they arrive sometime after your arrival?
8 A. No.
9 Q. No?
10 A. No. I believe Blackmore was not there. The
11 only ones I know for sure that I can recall to this day
12 was Kent, Chretien and Hall.
13 Q. Were there other officers present?
14 A. Yes, there was.
15 Q. But you know that Blackmore -- it's your
16 recollection, at least, that Blackmore was not there?
17 A. Correct.
18 Q. Describe the setting in which this meeting
19 took place. And by that, I mean, tell me who spoke.
20 Were the officers assembled in a room with someone who
21 took charge of the meeting and developed the plan?
22 What happened?
23 MR. THOMPSON: Objection as to form.
24 Go ahead.
25 THE WITNESS: I was -- we were downstairs in

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1 the PD meeting room. I know Sergeant Chretien spoke.
2 I know other officers spoke, but I cannot remember
3 which ones, exactly.
4 BY MR. GOSMAN:
5 Q. And at the time you arrived, was it clear
6 that the plan had been made to conduct the entry that
7 is outlined in the pages of Exhibit 10?
8 A. When I first arrived?
9 Q. Yes.
10 A. No, not that I know of. I arrived, and then
11 other officers arrived after me.
12 Q. Right. But in terms of -- when officer
13 Chretien addressed the group, did he address the group
14 with the plan for the entry into the Wachsmuth home
15 that you describe here in this document?
16 A. I don't recall.
17 Q. Do you recall how Officer Chretien started
18 the meeting?
19 A. I do not.
20 Q. And would it be safe to say that the list
21 that's contained on the left-hand side of the top of
22 Exhibit 10 was a list of officers who were assigned
23 specific duties for the entry into the Wachsmuth
24 residence?
25 A. To the best of my knowledge of trying to keep

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1 track with the officer, what they were saying -- the
2 officers -- how they would enter, that's what I have to
3 the best of my knowledge. I'm not positive if it's
4 100 percent accurate, though.
5 Q. Was there any discussion about alternatives
6 to the entry that was planned as represented in
7 Exhibit 10?
8 A. Not that I recall.
9 Q. There is a diagram in the middle of the page
10 that appears to be of the lot at the Wachsmuth home.
11 Do you know who drew that diagram or described it?
12 MR. THOMPSON: Objection as to form.
13 Go ahead.
14 THE WITNESS: I do not recall.
15 BY MR. GOSMAN:
16 Q. Was it drawn on a blackboard and you copied
17 it? Do you know that?
18 A. I know there was a few that were drawn on the
19 blackboard.
20 Q. A few diagrams?
21 A. Uh-huh.
22 MR. THOMPSON: Is that a yes.
23 THE WITNESS: Yes, sorry.
24 BY MR. GOSMAN:
25 Q. That's one of the other little details that

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1 we probably should have talked about. It's very
 2 important to answer yes or no.
 3 A. Okay.
 4 Q. Thank you.
 5 Below the diagram and at the left-hand column
 6 of the page, there's the term "knock and announce."
 7 You wrote that, correct?
 8 A. Correct.
 9 Q. And what -- and why did you write that? What
 10 was that about?
 11 A. That was the one thing that I recall them
 12 saying multiple times was that when they were on scene,
 13 the first thing they would do is knock and announce
 14 themselves.
 15 Q. Okay. And was that made clear, then, to all
 16 the other officers?
 17 A. To the best of my knowledge, yes.
 18 Q. It was mentioned multiple times?
 19 A. It was mentioned multiple times.
 20 Q. And do you have any knowledge whether the
 21 warrant that was obtained was a knock and announce
 22 warrant for the Wachsmuth residence?
 23 A. I do not recall.
 24 Q. And then there's the entry, "one male," and
 25 we have "two males" crossed out. Next to that there's

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1 A. I do not.
 2 Q. Do you remember that Chad or Dave were to
 3 talk to Wachsmuth?
 4 A. No.
 5 Q. All right. And then below that, we have the
 6 entry, "Pills and plants, 20 to 30 plants"; do you
 7 remember writing that?
 8 A. It's in my handwriting, but I don't recall as
 9 to who may have said that or if they did.
 10 Q. Do you remember someone saying there were 20
 11 to 30 plants in the residence?
 12 A. I do not.
 13 Q. And then below that, we have "Brown Suburban
 14 outside, but that's crossed out. Do you know why
 15 that's crossed out?
 16 A. No.
 17 Q. Let me ask you this question: Did you ever
 18 go back to these notes and make any corrections after
 19 you completed them?
 20 A. No.
 21 Q. Did you ever see the notes again?
 22 A. After I completed them?
 23 Q. Yes.
 24 A. I saw the notes for the first time since this
 25 incident two days ago.

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1 the entry "one female." And next to that there's the
 2 entry, "ten." And it looks like -- we decided that was
 3 ten-year-old child. Let me start with that question.
 4 Does that entry, "ten," looks like Y-O-A child, is that
 5 a ten-year-old child? Is that what you meant by that?
 6 A. Ten years of age.
 7 Q. Ten years of age. Okay. Thank you.
 8 What was that about? What was the
 9 conversation?
 10 A. I don't recall.
 11 Q. Do you know where that information would have
 12 come from?
 13 A. I don't.
 14 Q. And then you made -- or off to the right
 15 after the mark there, you've got "No more than three
 16 adults." Do you remember that there was a discussion
 17 that there were no more than three adults in the home?
 18 A. I do not recall.
 19 Q. Do you know why the entry, "two males" is
 20 crossed out?
 21 A. I do not.
 22 Q. All right. And then there's the expression,
 23 "Everyone gets cuffed," do you know why you wrote that?
 24 A. I do not.
 25 Q. How about "Scoop Wachsmuth out"?

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1 Q. And were you told that there were any
 2 mistakes in the notes that you took?
 3 A. I did not ask.
 4 Q. You did not ask, and I assume, then, that no
 5 one told you --
 6 A. No one said anything to me.
 7 Q. Do you think it's safe to assume that where
 8 things are crossed out, that you learned at some point
 9 that the information that you had written down was not
 10 or may not have been accurate?
 11 MR. THOMPSON: Objection as to form.
 12 MS. WESTBY: Join.
 13 THE WITNESS: I'd rather not assume.
 14 BY MR. GOSMAN:
 15 Q. Okay. All right. Well, and you don't know
 16 why you crossed them out?
 17 A. I don't recall.
 18 Q. Below "Brown Suburban outside," there's the
 19 statement, "He is a pill crusher." Do you remember
 20 that?
 21 A. I do not.
 22 Q. Okay. Below that -- off to the left -- let's
 23 see, we have "Tricia Wachsmuth, wife, works at
 24 hospital." Do you remember that information coming up?
 25 A. I don't recall it, no.

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1 Q. Okay. And below that, we have "PPD tack-1
2 coded." Tell me what that means.
3 A. Powell PD tack-1 was the channel that the
4 officers were going to be on. Coded is like encrypted.
5 Q. Okay. And then we have "Fence connects to
6 the home and garage and next to empty lot." Do you
7 remember anything about that?
8 A. No, I do not.
9 Q. Below that we have the phrase, "handguns
10 loaded everywhere in the house" and an exclamation
11 point. Do you remember anything about that?
12 A. No.
13 Q. Do you know why you would have put the
14 exclamation point at the end of that phrase?
15 A. No.
16 Q. Below that we have the statement, "Wife
17 drives a Jimmy." Do you know where that came from?
18 A. No.
19 Q. And "growing stuff under stairs." Do you
20 remember anything about that?
21 A. No.
22 Q. And then we have the statement, "Tom
23 Wachsmuth stays in lobby." That's also -- has an
24 exclamation point after it, correct?
25 A. Yes.

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1 Q. And three lines underneath it. Do you know
2 why you were emphasizing that as you were in the notes
3 here?
4 A. That was for my information.
5 Q. It was for you. I see, okay. That was your
6 job to see that Tom Wachsmuth stayed in the lobby?
7 A. We have -- I would say, no, it was not my
8 specific job.
9 Q. Well, what -- you say that was for you. What
10 do you mean by that?
11 A. We have a secure police department. And so
12 we can't just let people in. And so I put that down so
13 I knew, you know, if he came in, that I needed him to
14 wait in the lobby for officers.
15 Q. Do you remember anything else being discussed
16 that night about Bret Wachsmuth that is not in your
17 notes?
18 A. No.
19 Q. Did you try to write down everything that was
20 said that night about Bret Wachsmuth and the danger
21 that he may have posed to the officers?
22 MS. WESTBY: Object to the form of the
23 question.
24 THE WITNESS: Can you rephrase that just a
25 little bit?

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Direct Examination by Mr. Gosman

1 BY MR. GOSMAN:
2 Q. Did you try to record everything that was
3 said that night about Tom Wachs -- I'm sorry, Bret
4 Wachsmuth that would have posed a danger to the
5 officers, such as the statement, "Handguns loaded
6 everywhere in the house"?
7 MR. THOMPSON: Objection as to form.
8 MS. WESTBY: Join.
9 THE WITNESS: I would say yes, I tried. But
10 I can't guarantee everything is there.
11 BY MR. GOSMAN:
12 Q. Do you know if anyone else was taking notes
13 of this meeting?
14 MR. THOMPSON: Objection as to form.
15 THE WITNESS: No, not that I know of.
16 BY MR. GOSMAN:
17 Q. As far as you know, you were the only one
18 that actually was taking notes of what was occurring at
19 that meeting that night?
20 A. Yes, as far as I know.
21 Q. On the right-hand side of the page about, oh,
22 two-thirds of the way down, we have a list. And it's
23 numbered; do you see that?
24 A. Yes.
25 Q. What is that about?

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1 A. Somebody in the meeting was describing what
2 they would do. I was trying to write down as fast as I
3 could, correctly, what was going to happen. But I
4 cannot guarantee that any of that is 100 percent
5 accurate except Number 1 and Number 2, which would be
6 the knock and announce of the warrant.
7 Q. I see. But in any event, to the best of your
8 ability to take that information down, you did so that
9 evening, correct?
10 A. Yes.
11 Q. And with regard to the comments just below
12 the list, it says, "Call ambulance. No lights, no
13 sirens." Do you remember that specifically?
14 A. Yes.
15 Q. What was that about?
16 A. For our ambulance to stage. We were to call
17 them and have them stage, so we called them. And no
18 lights or sirens since it wasn't emergent, since we
19 were having them staged.
20 Q. And do you know why -- did anyone say
21 anything about why the ambulance was called?
22 A. In case it was needed for safety.
23 Q. Okay. Now let's go to the second page of the
24 exhibit. We see another list. And was that list
25 prepared at the same time that the list above on the

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1 first page of the Exhibit 10 was prepared?
2 A. It was done the same day.
3 Q. The same day?
4 A. Same meeting.
5 Q. The same meeting. How long did the meeting
6 last?
7 A. I don't recall.
8 Q. Was it more than an hour?
9 A. I don't recall.
10 Q. Well, let's just try to sort of do the best
11 we can to estimate how long the meeting lasted. Was it
12 more than two hours?
13 A. I don't want to estimate because I really
14 don't recall.
15 Q. It was more than three hours?
16 MR. THOMPSON: Objection as to form.
17 THE WITNESS: I don't recall.
18 BY MR. GOSMAN:
19 Q. Okay. Fine. Was this second list created at
20 some later point in the meeting?
21 A. Yes.
22 Q. Why?
23 A. Because it's on the second page. So I would
24 have started on it after I did the first page.
25 Q. And that would explain that it was created

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1 after the first list. So there is some order to the
2 entries on this list; isn't that true?
3 MR. THOMPSON: Objection as to form.
4 MS. WESTBY: Join.
5 THE WITNESS: There is some order, but it's
6 not completely in order.
7 BY MR. GOSMAN:
8 Q. Fine. Thank you.
9 How is the second list different from the
10 first list?
11 A. I don't recall what exactly any of it means.
12 Q. Okay. Could this list have been prepared
13 after the Wachsmuth warrant had been served and the
14 team had returned to the police station?
15 A. No.
16 Q. And then we have two diagrams at the bottom
17 of the page. Can you tell me what those are?
18 A. These would be diagrams that were drawn up on
19 the board. They are not 100 percent accurate because I
20 was doing the diagrams as well as trying to stay on
21 track of what the officers were talking about.
22 Q. And can you tell me why these diagrams are at
23 the very end of Exhibit 10?
24 A. I was just trying to get all the information
25 that I could.

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1 Q. Were these diagrams discussed at the end of
2 the meeting?
3 A. I do not recall.
4 Q. Apparently this second list of officers that
5 we have here was discussed at least after the first
6 list was prepared. Was it near the end of the meeting;
7 do you know?
8 A. I do not recall.
9 Q. Do you know what the abbreviation LG means?
10 A. No.
11 Q. Is that an LG?
12 A. That is an LG.
13 Q. Okay. LG4. And then that's next to
14 Chretien. And then we have LG3, LG2, and then LG1.
15 Could that have been their positions?
16 A. I do not recall.
17 Q. On the two entries at the very bottom of the
18 page, we have "front door and open window." Do you
19 know anything about those two comments?
20 A. No.
21 Q. Do you know whether the window was open?
22 A. No.
23 Q. You don't remember anyone saying anything
24 about that?
25 A. No.

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1 Q. At the time the officers assembled, were
2 they -- how were they dressed?
3 A. I don't recall.
4 Q. Did they have their body armor on?
5 A. I don't recall.
6 MR. THOMPSON: Objection as to form.
7 Q. While you were there, did they put on any
8 body armor?
9 A. No.
10 Q. What happened at the end of the meeting?
11 A. I went straight up to dispatch.
12 Q. Had the officers already left, or did they
13 leave at the same time?
14 A. I left first.
15 Q. Did you see any rifles?
16 A. I don't recall.
17 Q. Did you hear any discussion about a flashbang
18 device?
19 A. I don't recall.
20 Q. There is on Page I of the exhibit under an
21 entry that is listed as number four, flashbang,
22 bedroom.
23 A. Okay.
24 Q. Do you remember that?
25 A. I don't.

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1 Q. Do you remember any discussion about who
2 would enter the house in what order?
3 A. I don't recall.
4 Q. Let's go ahead and take just a minute and
5 compare the names of those persons on the list on the
6 top of the second page with those persons on the list
7 on the top of the first page.
8 MR. THOMPSON: You can take that out.
9 BY MR. GOSMAN:
10 Q. Yeah, that wouldn't be a bad idea to go ahead
11 and take the exhibit apart so you can compare the pages
12 side by side. Do you notice that everybody who has the
13 initials LG or the letters LG with a number to the side
14 is also on the entry team that was going into the
15 house?
16 MR. THOMPSON: Objection as to form of the
17 question.
18 THE WITNESS: They are on both pages. I
19 cannot guarantee that they went in the house, though.
20 BY MR. GOSMAN:
21 Q. All right. So all of the officers who were a
22 part of the entry team, including Officer Miner who is
23 listed on the second list as being ram six, are the
24 officers that are listed with the numbers to the side
25 indicating some kind of order, correct?

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1 MR. THOMPSON: Objection as to form.
2 MS. WESTBY: Join.
3 THE WITNESS: On this, the first page for the
4 ones that have entry, are the ones that have either the
5 LG or the ram, but as to order. I do not know.
6 BY MR. GOSMAN:
7 Q. All right. In any event, they are numbered,
8 correct?
9 A. Correct.
10 Q. Do you know why they would be numbered other
11 than to express the order that they were to enter the
12 house?
13 MS. WESTBY: Object to the form of the
14 question.
15 MR. THOMPSON: Join.
16 THE WITNESS: I don't recall why they were
17 numbered.
18 BY MR. GOSMAN:
19 Q. Okay. Did you attend any other meetings in
20 connection with this Wachsmuth warrant service than
21 what is represented here in Exhibit 10?
22 A. No.
23 Q. Have you had any other conversations, other
24 than what you mentioned previously about meeting two
25 days ago to look at this exhibit with any officers of

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1 the Powell Police Department about the notes that you
2 took that night?
3 A. No. And two days ago, I was just given the
4 notes. I did not have a meeting.
5 Q. A few more questions, ma'am. At the top of
6 the Exhibit 10, just below the exhibit sticker there's
7 McCaslin's name crossed out. Do you know what that's
8 about?
9 A. I do not.
10 Q. Do you remember hearing the Wachsmuth
11 vehicles described in the meeting that night?
12 A. No.
13 Q. I don't believe I have any further questions.
14 And thank you very much.
15 A. Thank you.
16 MR. THOMPSON: We'll read and sign.
17 (Proceedings concluded at 9:36
18 a.m., November 22, 2010.)
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1 **DEPONENT'S CERTIFICATE**
2 I, MARISSA TORCZON, do hereby certify, under
3 penalty of perjury, that I have read the foregoing
4 transcript of my testimony consisting of 31 pages,
5 taken on November 22, 2010 and that the same is, with
6 any changes noted below, a full, true and correct
7 record of my deposition.
8

PAGE	LINE	CORRECTION	REASON FOR CORRECTION
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10	---	---	---
11	---	---	---
12	---	---	---
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MARISSA TORCZON Date

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CERTIFICATE

1
2 I, VONNI R. BRAY, Registered Professional
3 Reporter, and Notary Public for the State of Montana,
4 do hereby certify that Marissa Torczon was by me first
5 duly sworn to testify to the truth, the whole truth,
6 and nothing but the truth;

7 That the foregoing transcript, consisting of
8 32 pages, is a true record of the testimony given by
9 said deponent, together with all other proceedings
10 herein contained.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 11th day of December, 2010.

13

14

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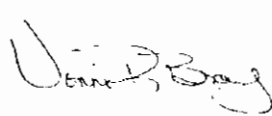
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City of Powell, et al.

Marissa Torczon
November 22, 2010

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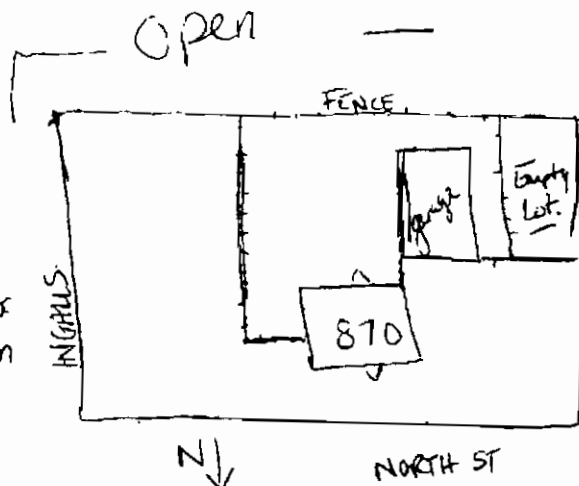
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18:4

WACHSMUTH V. CITY OF
POWELL - CV 10-041-J
PLAINTIFF'S EXHIBIT
10

Brown/Brikakis/Emblemore - garage.

P05 * Brett - Back Door.
P03 * Cody - Back Door
P02 * Matt Brikakis - Perimeter
P18 * Chapman - Entry
P15 * Danzer - Entry
P10 * Roy - Entry
P04 * Chretien - Entry
P17 * Hall - Entry
P01 * Dave - Backdoor.
P08 * Lee - 24hrs. Perimeter.
P14 * Alan - Bedroom.
P09 * Miner - Entry - Backdoor
P16 * McCaslin evidence/Bedroom



~~Wachsmuth~~
~~Wachsmuth~~

Knock and announce.

1 male ~~2 males~~ 1 female 10 year child. > NO MORE THAN 3 ADULTS.

everyone gets cuffed.

Tricia
Wachsmuth
Wife works
at hospital

Scoop Wachsmuth out.

(Had or Dave - talk to Wachsmuth.

Scott baggett
754-0264
202-24116

pills; plants - 20/30 plants.

~~have~~ ~~Suburban outside~~

He is a pill crusher.

police
Coded

fence connects house: garage
next to empty lot.

hand guns, loaded everywhere in the house!

wife drives a Jimmy.

growing stuff under stairs.

"Father"
if shows
up.

Tom Wachsmuth Stays in lobby! Swi

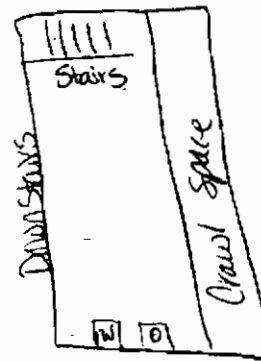
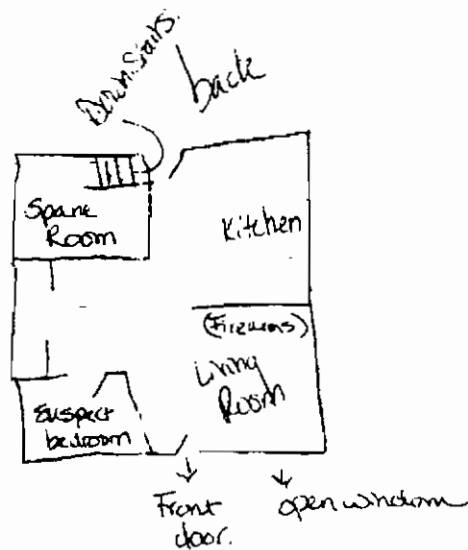
1. Knock door
2. police Search warrant
3. break window
4. flash bang (back
5. push for noise
6. break window (back
7. Door.

Call
Ambulance
No lights/no
Sirens

Stage at Fire Dept
Route - Monroe - Rd 8
to South St.

00151

Chretien - LG 4 - ENTRY
 Kent - Front Bedroom
 Danzer - LG 3
 Hall - LG 2 } ENTRY
 Chapman - LG 1
 Lara - Back door
 Bradley - Back door
 Miner - Ram to
 Brilakis -
 Brown - } Garage
 Blackmore -
 Eckerd - LG 5
 McCash - Front Bedroom



Appendix Seven

In The Matter Of:
Tricia Wachsmuth v.
City of Powell, et al.

Bret Wachsmuth
November 24, 2010

Bray Reporting
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BRET WACHSMUTH - November 24, 2010 Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WYOMING
3 -----
4 TRICIA WACHSMUTH,)
5 Plaintiff,)
6 vs.) NO. 10-CV-041J
7)
8 CITY OF POWELL, AND IN THEIR)
9 INDIVIDUAL CAPACITY, TIM)
10 FEATREERS, CHAD MINER, MIKE)
11 CHRETIEN, ROY ECKERDT, DAVE)
12 BROWN, MIKE HALL, BRETT LARA,)
13 MATT MCCASLIN, ALAN KENT, MATT)
14 DANZER, OFFICER BRILAKIS, LEE)
15 BLACKMORE, CODY BRADLEY, KIRK)
16 CHAPMAN, JOHN DOES #1-#4,)
17 Defendants.)
18
19 DEPOSITION OF BRET WACHSMUTH
20 8:06 a.m., Wednesday, November 24, 2010
21
22 Pursuant to notice, the deposition of BRET
23 WACHSMUTH was taken in behalf of Defendants in
24 accordance with the applicable Federal Rules of Civil
25 Procedure at 270 North Clark, Powell, Wyoming, before
Vonn R. Bray, Registered Professional Reporter and
Notary Public of the State of Montana.

BRET WACHSMUTH - November 24, 2010 Page 2

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Also Present: Tim Feathers

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1 Direct Examination by Mr. Thompson
2 BRET WACHSMUTH,
3 having been first duly sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. THOMPSON:
6 Q. Sir, would you go ahead and please state your
7 full name for the record.
8 A. Bret Alan Wachsmuth.
9 Q. And can you give me your address?
10 A. 524 Road 7, Powell.
11 Q. Have you ever had a deposition taken before?
12 A. No.
13 Q. You're not represented by counsel today; is
14 that correct?
15 You don't have an attorney here?
16 MR. GOSMAN: Actually, he does.
17 MR. THOMPSON: You're his attorney?
18 MR. GOSMAN: Uh-huh.
19 MR. THOMPSON: And I prefer that he answer
20 the question.
21 MR. GOSMAN: Well, okay.
22 BY MR. THOMPSON:
23 Q. Is Mr. Gosman your attorney?
24 A. Yes.
25 Q. You've retained Mr. Gosman?
A. (Witness nods head.)

BRET WACHSMUTH - November 24, 2010
Direct Examination by Mr. Thompson

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1 Q. When did you do that?
2 A. I really don't know. Probably quite a while
3 ago.
4 Q. And for what purpose did you retain
5 Mr. Gosman?
6 A. For the depositions, I would imagine.
7 Q. Have you talked to Mr. Gosman prior to the
8 deposition?
9 A. Oh, yeah.
10 Q. And what did you do to prepare for the
11 deposition today?
12 A. Really nothing, honestly.
13 Q. You're going to have to speak up.
14 A. There really wasn't much of a prep, you know,
15 for anything.
16 Q. Okay. What exactly did you do -- other than
17 conversations with Mr. Gosman, what did you do to
18 prepare for your deposition today?
19 A. Nothing really.
20 Q. Did you look at any documents?
21 A. No.
22 Q. Did you look at any photographs?
23 A. No.
24 Q. Have you talked to anybody else, other than
25 Mr. Gosman, about your deposition this morning?

BRET WACHSMUTH - November 24, 2010
Direct Examination by Mr. Thompson

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1 A. This morning? No.
2 Q. About the deposition that's occurring today?
3 A. No, I mean, the only person I've talked to is
4 my wife, and it's just the fact that I was nervous
5 about being deposed, just because I'm not good in
6 public, you know, settings. Social anxiety disorder,
7 things like that. So I tend to get a little anxiety.
8 Q. Well, that brings up, I guess, a couple of
9 issues. One, are you on any prescription medication
10 this morning that would in any way affect your ability
11 to answer questions honestly and accurately?
12 A. No. I am on prescription medication, but
13 nothing that would affect my ability to answer
14 honestly.
15 Q. Why don't you tell me what prescription
16 medication you're on.
17 A. Lorazepam. That's the generic name. Ativan,
18 which is the brand name. It's an anti-anxiety
19 medication.
20 Q. And you've taken both of those medications
21 prior --
22 A. It's the same medication. That's just the
23 generic and the non-generic name. And, yeah, I've been
24 on them for about eight years or more.
25 Q. Eight years?

BRET WACHSMUTH - November 24, 2010
Direct Examination by Mr. Thompson

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1 A. Yeah.
2 Q. Your wife is whom?
3 A. Yes.
4 Q. Your wife is whom? What's her name?
5 A. Tricia Wachsmuth.
6 Q. And she is the plaintiff in a lawsuit against
7 the City of Powell, correct?
8 A. Yes.
9 Q. And she had her deposition taken. Are you
10 aware of that?
11 A. Yes.
12 Q. Did you talk to her about what was said in
13 her deposition?
14 A. Yeah, briefly. You know, just the gist of
15 things. She was kind of after the fact, you know,
16 stressed, you know, after going through the stress of
17 it.
18 So, yeah, basically just the gist. She
19 couldn't remember every single thing that was said
20 because it was like over seven hours.
21 Q. Have you read her deposition?
22 A. No.
23 Q. Is it okay if I call you Bret this morning?
24 A. Sure.
25 Q. Bret, who is your father?

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1 A. Thomas Wachsmuth.
2 Q. And what does Thomas Wachsmuth do for
3 employment?
4 A. He works for the Department of Criminal
5 Investigation, DCI.
6 Q. The State of Wyoming?
7 A. Yes.
8 Q. Have you talked to your father about the
9 deposition today?
10 A. Other than the fact that I'm nervous about
11 it, no. Just for the anxiety reasons.
12 Q. Okay. So you did have some conversation with
13 him?
14 A. Yeah.
15 Q. What was the extent of that conversation?
16 A. Basically that I'm nervous about it just
17 because, I would say the best way to describe it is I
18 usually don't put myself in situations where I'm
19 uncomfortable because of my anxiety and such. And this
20 is one of them situations. You know, I'm dealing with
21 people I've never met, besides Jeff, which, you know...
22 Q. Okay. I appreciate that.
23 Just some ground rules for the deposition.
24 The court reporter can only take one of us down at a
25 time, and so we can't talk over each other.

<p>BRET WACHSMUTH - November 24, 2010 Direct Examination by Mr. Thompson</p> <p>Page 9</p> <p>1 A. No problem. 2 Q. There may be a point where we get into this 3 mode where you're anticipating my question and 4 providing an answer, or vice versa, and we don't want 5 to end up talking over each other because it ends up in 6 not having a clean record. 7 A. Okay. 8 Q. And at the end of the deposition, the court 9 reporter is going to put this in booklet form, and it 10 will be your responses to my questions, and both of 11 them will be typed out, okay? 12 A. Okay. 13 Q. You understand that you're under oath? 14 A. Yes. 15 Q. You understand that the testimony that you 16 provide today can be used to in peach you at the trial 17 in this matter, which is set for February in federal 18 court? 19 A. Yes. 20 Q. And during the day, if in fact you need a 21 break at any time, as long as there's not a question 22 pending, let me know. 23 A. Okay. 24 Q. We'll stop, take a break and we'll continue 25 the deposition after you've had an opportunity to get a</p>	<p>BRET WACHSMUTH - November 24, 2010 Direct Examination by Mr. Thompson</p> <p>Page 11</p> <p>1 college coursework that you've taken? 2 A. Mainly natural resources, kind of game warden 3 type things, you know. But, unfortunately, the mental 4 issues of bipolar and things have made it very 5 difficult to complete school. 6 Q. You stated that after your graduation from 7 high school you worked for a brief period of time. 8 Where did you work? 9 A. I worked a few places. I worked at Bob 10 White. It was a candle factory in Mora, Minnesota. I 11 also worked at EPC, which is Engineered Polymers 12 Corporation. It's a plastics factory where they made 13 things from -- parts for ATMs and all sorts of 14 different plastics. 15 Q. How long have you been gainfully employed 16 since you left high school, what's the period of months 17 or years? 18 A. How long have I been employed? 19 Q. Yeah. And are those the only two jobs that 20 you've been employed? 21 A. Well, when I was 16, I worked at Pamida for 22 about a year and a half. Other than that, I've had a 23 few odd jobs. I worked for an electrician for a little 24 while. And then after -- for about -- let me see, it's 25 2010, so for about three years or so, I've been on</p>
<p>BRET WACHSMUTH - November 24, 2010 Direct Examination by Mr. Thompson</p> <p>Page 10</p> <p>1 glass of water or do whatever you need to do, okay? 2 A. Okay. 3 Q. If you don't understand a question, I want 4 you to ask me to repeat the question, because if you 5 provide me an answer to a question which I've asked, 6 I'm going to assume that you understood it in providing 7 an answer to the question that was asked, okay? 8 A. Sure. 9 Q. Bret, why don't you give me just a brief 10 history of where you grew up, where you went to high 11 school, and why don't we start with where you graduated 12 from high school. 13 A. Okay. I graduated high school in 19 -- the 14 class of 2000, in Mora High School in Mora, Minnesota. 15 Q. And so you did graduate from high school? 16 A. Yes. 17 Q. And what did you do after high school? 18 A. I worked for a brief time, and then I went to 19 Cambridge Community College. I've been to Northwest 20 Community College in -- and this is in Minnesota -- 21 Thief River Falls. And when I came out here, I went to 22 the college in town briefly. 23 My current education is I'm about five 24 credits short of an associate's in science. 25 Q. What's been your area of emphasis in the</p>	<p>BRET WACHSMUTH - November 24, 2010 Direct Examination by Mr. Thompson</p> <p>Page 12</p> <p>1 Social Security disability. 2 Q. So other than the two jobs that you mentioned 3 after graduating high school, you've had no other 4 gainful employment? 5 A. Well, there was Bob White, Pamida. There was 6 more than two. I worked for the electrician. I worked 7 very briefly at another factory that did packaging. 8 I'm trying to think. Most of these were quite a while 9 ago when I was younger. 10 Other than that, that's pretty much what I 11 can think of. There may have been another job or two 12 that was brief. 13 The longest held jobs I had were Pamida when 14 I was 16 and also at the candle factory, which was also 15 about a year and a half or so. 16 Q. And you stated you've been on Social Security 17 disability for the past three years? 18 A. Or so. I don't know exactly the date. 19 Q. When did you -- if you can recall, when did 20 you apply for Social Security disability? 21 A. Probably 2005 or around there. And then the 22 first time -- typically, with that type of thing, you 23 get denied the first time. And then the second time 24 after you reapply, they do the review and -- from their 25 Social Security doctor, and then it goes from there.</p>

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Direct Examination by Mr. Thompson

1 Q. When you applied for Social Security
2 disability, did you have to go through a medical
3 examination?
4 A. Yes.
5 Q. And do you recall who the doctor was that
6 performed that medical examination?
7 A. I don't know his name because it was a doctor
8 that I only seen for that, 'cause he was brought in --
9 or at least selected by Social Security. They had
10 selected that doctor. It wasn't my doctor that I was
11 seeing at the time.
12 Q. Are you on 100 percent disability?
13 A. Yes.
14 Q. And what is the disability that you qualified
15 for?
16 A. Bipolar, social anxiety, general anxiety,
17 mild agoraphobia. And I believe that is it.
18 Q. It doesn't appear that you're on any
19 medication for bipolar. Is that correct?
20 A. Yes, I am.
21 Q. What is the medication?
22 A. Right now I'm taking the lorazepam for
23 anxiety, I'm taking Paxil for the depression, and
24 there's one other one that I really can't remember the
25 name because it's relatively new because I've been

BRET WACHSMUTH - November 24, 2010 Page 14
Direct Examination by Mr. Thompson

1 trying different ones for mood stabilizers. It's an
2 anticonvulsant that can also be used for the treatment
3 of mood stabilizing.
4 But I was going to look for my bottle this
5 morning to come up with the name and I couldn't find
6 it, it's -- my wife was sleeping, so it was probably in
7 the bedroom. There are the three that I'm on now. And
8 if you want at a later time, I can -- like later today
9 if you want to know the name, I can come up with that
10 for you.
11 Q. Where did you go through your physical or
12 your medical examination for Social Security
13 disability?
14 A. Mora, Minnesota.
15 Q. Do you recall when the first time you learned
16 of being diagnosed with bipolar?
17 A. Well, shortly after -- I knew there was
18 problems before my school and all during high school.
19 I had lots of anxiety and depression issues. And
20 finally, you know -- it's kind of hard to explain. But
21 shortly after I graduated things kind of came to a
22 head, and I just -- I knew that I needed to see a
23 doctor. And that was probably around 2000.
24 Then I went in and saw just a regular family
25 practitioner doctor. And he started me off on

BRET WACHSMUTH - November 24, 2010 Page 15
Direct Examination by Mr. Thompson

1 something and then recommended me to a psychiatrist.
2 And that's where it's been ever since.
3 I've only seen a few psychiatrists because
4 I've been with the psychiatrist the whole time since
5 I've started with him. But I lived in Mora, and I
6 lived in Thief River Falls with my grandmother for a
7 while, and I saw a different one there.
8 And then for most of the time I've seen Dr.
9 Elizabeth Walter in Billings. Most of my treatment has
10 been through her.
11 Q. Do you continue to treat with her?
12 A. Oh, yes.
13 Q. And how frequently?
14 A. It varies, honestly. Depending on if she
15 tries new meds with me or if things are going well, I
16 can go a month or two before an appointment. Sometimes
17 they are monthly or twice a month, depending on how I'm
18 reacting to different medications and things.
19 Q. In your past, how has bipolar manifested
20 itself in the way that you conduct your life on a
21 day-to-day basis?
22 A. It's been tough, especially -- recently, I've
23 been a little bit better with -- Dr. Walter has been
24 the best doctor. She's a little more understanding.
25 But in the past, it would go from pretty

BRET WACHSMUTH - November 24, 2010 Page 16
Direct Examination by Mr. Thompson

1 severe depression to a little bit more manic episodes.
2 And they would go on in the past when I wasn't being
3 treated properly about three months at a time, I'd be
4 really depressed.
5 The next three months I would be relatively
6 manic or I'd be -- lots of energy, you know, wanting to
7 just run around and do stuff. You know.
8 The depression, I'd pretty much hang at home,
9 you know, and be depressed. I think that's pretty
10 self-explanatory.
11 Q. And the social anxiety disorder that you
12 described, how did that manifest itself?
13 A. That's been an issue for a very long time. I
14 pretty much stayed out of -- besides the couple close
15 friends, that's all I would do. I wouldn't go to
16 social gatherings very often. I mean, very seldomly.
17 I would hang out with a couple people. And
18 people I felt safe around. And I didn't go to things
19 like concerts or any place I'd feel uncomfortable. So
20 I've been relatively sheltered as far as going out and
21 doing social-type interactions with strangers,
22 especially.
23 Q. And you described one other diagnosis that
24 you believe you received?
25 A. Yeah. Which one are you referring to, the

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1 mild agoraphobia?
2 Q. Are there more than one? Are there
3 additional diagnoses?
4 A. Well, the main one is bipolar and the anxiety
5 disorders a lot of times go along with the bipolar.
6 The agoraphobia, I don't know if you know what that is.
7 Q. Tell me what it is.
8 A. In my opinion, it's relatively mild. But it
9 is the fear to kind of leave your house at times. In a
10 severe case, which is not me, people won't leave their
11 houses because they are afraid of the outside world.
12 In my case, it only manifests itself during
13 more depressive sort of states. But I just don't want
14 to interact with the general public. And usually I
15 don't anyway because of the anxiety. But that kind of
16 stay in the safe zone, I know.
17 Q. Obviously the bipolar diagnosis was made at
18 least three years ago.
19 A. Oh, yeah.
20 Q. And how about the social anxiety aspect of
21 it?
22 A. That was the first thing the family doctor
23 diagnosed me with.
24 Q. So shortly after high school?
25 A. Yeah, right after. The same year I

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1 graduated. And it would have been diagnosed before
2 that, but -- I don't know, high school is a messed up
3 time anyway, and I thought that maybe everybody was
4 like I was.
5 And then when I graduated, I kind of realized
6 that this can't be normal. So that's when I decided to
7 get treatment.
8 Q. Have you ever exhibited any violent
9 propensities as a result of these disorders?
10 A. Never.
11 Q. No indication in your medical records
12 whatsoever of any violent incidents?
13 A. Never.
14 Q. Any other mental or medical disorders that
15 you've been diagnosed with?
16 A. No.
17 Q. Have you ever had any physical -- serious
18 physical ailments since high school?
19 A. Physical as of?
20 Q. Injuries.
21 A. I don't know what you classify as serious. I
22 broke my ankle once. Oh, and that's another
23 employment. I worked at the greenhouse in Northern
24 Gardens in Cody. And that's -- the end of that
25 employment was 'cause I broke my ankle there.

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1 Q. When did that occur?
2 A. You know, I don't know. It was before I got
3 disability.
4 Q. Any other injuries of that nature where you
5 broke a bone?
6 A. That's the only thing I've ever broke in my
7 entire life.
8 Q. Any traumatic injuries since high school?
9 A. No. I've had back issues. I had a slipped
10 or bulged disc. I don't know what the correct term is
11 for that. And I still -- couple sections of my lower
12 spine is -- went to physical therapist at Big Horn
13 Orthopedic and Spine, Powell here said that they don't
14 move. They just don't move. I've been having issues
15 with that, but I don't know if that's, you know...
16 Q. When did you first begin having issues with
17 your lower back?
18 A. About early 2008.
19 Q. And you were treated by a doctor in the Cody
20 area?
21 A. At first it was in Powell, family doctor.
22 And they gave me an MRI. And Powell missed -- the
23 radiology department in Powell missed the disc until I
24 brought it to a specialist in Cody. And they looked at
25 the old MRI and they are like, yeah, you had a slipped

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1 disc. It wasn't super severe at the time, but it was
2 enough where it was definitely causing me issues.
3 Q. Are you still being treated for that problem?
4 A. Somewhat, yeah.
5 Q. Okay. Describe the treatment that you're
6 currently receiving.
7 A. I get 15 Vicodin a month and a muscle
8 relaxer, carisoprodol 50. And that's it. And I was
9 going to physical therapy in the hospital in Powell,
10 but things got way too expensive, even with my medical.
11 They cover 80 percent.
12 And my daily physical therapy was three times
13 a week, was anywhere from two to six, \$700 a day. So
14 even 20 percent of that was costing me a lot. So then
15 I went to the other place in town here. Used to be Big
16 Horn Orthopedic and Spine, whatever it was. And that
17 was much cheaper.
18 And that's why I got -- 'cause in Powell, all
19 they would do is send me on a few exercises and put me
20 on a treadmill and that's about it. And the other
21 place actually was a little more proactive in trying to
22 find out what's going on.
23 Q. Have you ever had any substance abuse issues?
24 A. No.
25 Q. Never any problems with prescription

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1 medications?
2 A. No.
3 Q. Have you ever discussed the substance abuse
4 issues with your psychiatrist in Billings?
5 A. I told her about my teenage years, which is
6 all that -- and it wasn't -- it was more of an
7 experimentation-type thing, pretreated for the mental
8 stuff. And mainly marijuana is what I was using as a
9 teenager.
10 Q. And you haven't used since your teenage
11 years?
12 A. Well, I used right before this incident on
13 the 24th of February. I had just started smoking
14 again, like literally a month before this happened.
15 And it was helping little bit. But obviously since
16 then, I haven't touched the stuff and never will again.
17 Q. About -- and when I say substance abuse
18 issues with the prescription medications, was there
19 ever a time that you were addicted to prescription
20 medications?
21 A. Not really. I think the only thing that I'm
22 addicted to, but it's not because of abuse, is the
23 Lorazepam because it is addictive. But it's something
24 I take as prescribed. So if I were to stop it, I would
25 not feel the best. I would get rebound anxiety, things

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1 like that. And, you know...
2 Q. Do you ever share your prescription
3 medications with your wife?
4 A. No.
5 Q. You ever take anybody else's prescription
6 medications?
7 A. No.
8 Q. You're currently married?
9 A. Yes.
10 Q. How long have you been married?
11 A. Since June 4th, I believe. 2005.
12 Q. And to whom are you married?
13 A. Tricia Wachsmuth.
14 Q. Been married prior to your marriage to
15 Tricia?
16 A. No. She was the only serious relationship
17 I've ever been in.
18 Q. At the time of the incident, which is the
19 subject matter of this lawsuit, where were you living?
20 A. 870 East North Street, Powell.
21 Q. And were you renting or did you own --
22 A. We owned.
23 Q. And was the home in your name?
24 A. I believe it was in my name, yes. It could
25 have been in mine and my wife's, but I believe it was

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1 in mine. I don't know if it was in both ours.
2 Q. And when did you purchase that home?
3 A. Well, at the time of the incident, I believe
4 we'd owned it for about a year. So that would be late
5 '08, I guess. I don't know the exact date.
6 Q. Do you know who you purchased it from?
7 A. Real estate connection. My agent was Ray
8 Link.
9 Q. Was there a mortgage on the home?
10 A. Yes.
11 Q. Do you know who the mortgage was with?
12 A. It went initially through First National Bank
13 in Powell. And then they gave it to WCDA because of
14 the down-payment issues. You know, we've never made a
15 lot of money.
16 Q. When you purchased the home, did you --
17 excuse me, did you obtain an appraisal?
18 A. I think we had to going through WCDA.
19 Q. And when you -- you sold the home, correct?
20 A. Yes.
21 Q. When did you sell the home?
22 A. As soon as this happened we put it on the
23 market. And it sold within a month, I believe.
24 Q. Okay. And do you know who it sold to?
25 A. You know, I don't know their names. I know

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1 one of them works at O'Reilly's in town here. That's
2 all I know. Maybe one works at Pizza Hut.
3 Q. Was it a cash transaction?
4 A. I don't think so, because at the point, I
5 hadn't paid any really towards the principle of my
6 mortgage, so it was all to the bank. I never saw any
7 money from the sale of the home. And I sold it at a
8 slight loss.
9 Q. You did not finance it?
10 A. What do you mean?
11 Q. You didn't carry back the note on the
12 property, did you; in other words, money was being paid
13 to you by the buyers?
14 A. No, I never received any money from the
15 buyers. I believe it was all -- I never saw the check.
16 I think it was all dealt with by the bank, because they
17 didn't write me a check. And I don't even think I had
18 to bring the check to the bank. I think it was all
19 done through that, as far as I remember.
20 Q. When you say you think you had a slight loss,
21 why do you think that?
22 A. Well, I knew that.
23 Q. And why do you know that?
24 A. Because I know what I bought the house for
25 and it was right around 100,000. I don't remember the

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1 exact numbers. And I remember we had to pay some, not
2 to mention the damages that we had to fix before we
3 could sell it. But we had to pay some at the closing
4 just because what they -- what the new appraisal was
5 and everything else and the market. I couldn't get
6 what I paid for it. It was close, but it was at a
7 slight loss.

8 Q. Was the housing market down when you sold it?
9 A. You know, I honestly don't keep up on these
10 things. But I don't think it was that down at the
11 point. My deal was, is I wanted to get rid of it as
12 soon as I could because neither my wife -- especially
13 my wife, couldn't even go on the property after this.
14 I mean, never.

15 Q. What did you list the home for?
16 A. I believe it was 100,000. I believe we
17 listed it for maybe about 2000 over what we owed. And
18 obviously through negotiations, that never happens.
19 You never get what you ask. We sold it for right
20 around what I had purchased it for. But it was just a
21 little bit less.

22 Q. Okay. Can you tell me what you purchased it
23 for and what you sold it for?
24 A. You know, I'd have to look at my paperwork.
25 But I -- I can't tell you exactly because I just don't

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1 remember. But I think it was right around \$100,000.
2 Q. You have the paperwork for both the purchase
3 as well as the sale of the property?
4 A. I'm sure I do, yeah.

5 Q. You can provide that to your attorney?
6 A. I'm sure I can.

7 Q. Would you do that?
8 A. No problem, yeah.

9 Q. And you stated that there were damages to the
10 home that you had to work on?
11 A. My father worked on.

12 Q. Okay. You didn't work on them?
13 A. No. I...

14 Q. Did your father charge you for those repairs
15 that he made?
16 A. He couldn't charge me because I didn't have
17 enough money to pay him. He paid for all of that out
18 of pocket. I paid for as much as I could. But doors
19 and things like that are relatively expensive.

20 We had to paint the whole thing on the
21 inside. We had to do some work from the broken
22 windows. We had to replace them. Baseboards, vent
23 things that were kicked in. The -- what do you call
24 it? The stuff -- the molding on the floor, some of
25 that was ripped up. Stuff like that.

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1 Q. Do you have receipts for --
2 A. Yes.

3 Q. Let me finish my question. This is the part
4 that I was telling you was coming.
5 A. I'm sorry.

6 Q. Do you have receipts for the repairs that
7 were made to the home?
8 A. Yes.

9 Q. Okay. And do you have all the receipts?
10 A. Yes. I believe so.

11 Q. Do you know what those totals amount to?
12 A. Not offhand, but it would be very easy to
13 find out.

14 Q. And you could provide that also to your
15 attorney?
16 A. Yes, I can.

17 Q. At the time this incident occurred, were you
18 making repairs to the home? Were you working on the
19 home?
20 A. Somewhat, yeah. We had just put wood floors
21 in the living room. Not hardwood floors, but the next
22 step down from that, I guess, the cheaper version.
23 Most we could afford.

24 Q. Who did that work for you?
25 A. My dad and I did it together. And my brother

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1 helped also.

2 Q. Did your dad, with these repairs that were
3 being made, did they include taking the trim off the
4 door jams?
5 A. Door jams. I don't know. I don't think so.
6 I don't remember exact specifics on that one as far as
7 everything we did to put the floors in.

8 Q. I'm sorry, I couldn't hear the last part of
9 that?
10 A. I don't remember the exact specifics of
11 everything it took to do it. Basically, I remember
12 just laying the wood floors in and putting the new --
13 we had to buy plywood to -- or whatever you use for
14 underneath the wood floor, and then the padding that
15 goes under that and then the wood floors themselves.

16 And I basically helped with -- it's kind of a
17 tongue and groove-type of deal. And I helped assemble
18 the pieces of the wood floor. That's the role I
19 played. My dad is a much better carpenter than I am.

20 Q. How long did the repairs to the wood floor
21 take?
22 A. I think we did it in a day, a full day,
23 because we had my brother's help and stuff.

24 Q. Bret, why don't you describe for me what you
25 can recall were the repairs that you had to make to the

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1 home that you -- or your wife alleges in her complaint
2 were the result of this incident.
3 A. Okay. I can do that to the best of my
4 knowledge, because I wasn't there for most of it, but I
5 do know the gist of things.
6 Q. And before you answer, you knew the condition
7 of the home prior to this incident, correct?
8 A. Yes.
9 Q. And you knew the condition of the home after
10 this incident?
11 A. Yeah.
12 Q. So you would be aware of the changes in the
13 home between the time that you left that evening and
14 the time you came back to the home?
15 A. For the most part, yeah.
16 Q. Okay. Go ahead.
17 A. First thing is the front door. That was
18 completely ruined. The frame around the door and where
19 it latches was completely broken. You couldn't close
20 the door. It was un-closeable. So that had to all be
21 replaced, the door and the frame.
22 And paint throughout the whole house,
23 especially in the bedroom where the flashbang was
24 thrown.
25 At that point, we didn't -- we threw away the

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1 bed and all the bedding because it was scorched and
2 burned and things.
3 We had to -- I don't know if we replaced or
4 repaired the baseboard along the floors.
5 The window, of course, in the master bedroom
6 had to be completely replaced
7 Let me think here. The vents that were
8 kicked in, the heat register vents. There was one that
9 was kicked in. There was a couple that were ripped
10 out.
11 I had to fix insulation in the garage that
12 was ripped off the walls. Like I say, I didn't play a
13 hundred percent role in fixing this because I didn't
14 feel comfortable, even being in town either.
15 I know there's more than that, but that's all
16 I can recall at the time. Those are the main things I
17 remember.
18 And we tried our best to fix the siding
19 because the board, after they had broken the window,
20 they had screwed a board onto it -- I forget what kind
21 of siding it is, but it's not the kind that you can
22 just repair. Basically fix the holes.
23 MR. THOMPSON: What number are we on?
24 THE REPORTER: 61.
25

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1 BY MR. THOMPSON:
2 Q. I'm going to hand you what's been marked as
3 Deposition Exhibit 61.
4 (Exhibit 61 identified)
5 BY MR. THOMPSON:
6 Q. Is that the front door to the residence that
7 you lived at at the time of this incident?
8 A. Yes, it is. The old one.
9 Q. And can you point out for me in the
10 photograph, other than the door, where there was damage
11 that was done?
12 A. Can't see it from this photo. You would have
13 to see it a little more inside, because this was --
14 where the door latches was broken. Not just the latch,
15 the wood itself.
16 Q. Okay.
17 A. And you can't see that. This is not close
18 enough.
19 Q. So it would have been something from the
20 inside of the house?
21 A. Well, when you close the door, or if the door
22 would have been able to close all the way, it would
23 have been covered up, so you'd see it from the
24 threshold of the door.
25 Q. How long prior to this incident did you and

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1 your father work on the wood floors in the home?
2 A. A day.
3 Q. I understand the time that it took to
4 complete it was a day. But when did this occur? Was
5 it months prior to this incident? Was it a week prior
6 to this incident?
7 A. I think it was months.
8 Q. Months?
9 A. Yeah, I believe so. I'm not 100 percent
10 sure. But it wasn't a week, I know that. We had had
11 it for a little while at that point.
12 Q. So would there be receipts for when that
13 occurred?
14 A. I don't know. My dad would know more about
15 that.
16 BY MR. THOMPSON:
17 Q. Bret, I'm going to hand you what's been
18 marked as Deposition Exhibit No. 62 and ask you to take
19 a look at that.
20 (Exhibit 62 identified)
21 THE WITNESS: Okay.
22 BY MR. THOMPSON:
23 Q. Can you tell me what that is?
24 And I would represent to you that these
25 photographs that you have before you, at least the

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1 first two, are photographs that were taken by the
2 Powell PD at the time this --
3 A. Well, I think some of these are.
4 Q. Let me finish that.
5 -- at the time this incident occurred.
6 A. I'm sorry.
7 Q. Go ahead.
8 A. I'm sorry.
9 Some of this stuff is when we bought the
10 house in the crawl spaces in the basement, they had
11 extra trim. Some of this is stuff that when after we
12 did the wood floors in the living room, we didn't get
13 all of it pieced together perfectly, like behind the
14 couch, things like that. So some of that may be left
15 over.
16 The rest, I don't know what these bigger
17 pieces are. I know what the baseboard trim is.
18 Q. That's not damage from --
19 A. No, it's not.
20 Q. -- the execution of the search warrant?
21 A. No, the damage, as far as what I'm referring
22 to the trim, happened in the bedroom, the spare bedroom
23 for the main part, which we didn't do any work in.
24 This is all living room stuff.
25 Q. Bret, why don't you tell me, when was it that

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1 now.
2 Q. Has that been true of your relationship,
3 since, say, graduation from high school?
4 A. Well, for a time being they moved out here
5 and I was in Minnesota, so I had phone contact. You
6 know, we'd call each other, and, you know, normal
7 conversation-type things.
8 Q. Is your father aware of your Social Security
9 disability?
10 A. Yes.
11 Q. Is he aware of your diagnosis of having
12 bipolar?
13 A. Yes.
14 Q. Is he aware of the other diagnosis that
15 you've described?
16 A. I believe so, yeah.
17 Q. And has he been aware of those diagnoses as
18 they have been told to you; in other words --
19 A. Oh, yeah. Yeah, they have known the whole
20 time. I was very open with them about it, 'Cause I
21 think they knew there was something, you know, going on
22 with me.
23 But I think they also realized it was
24 something I needed to do on my own time to get things
25 straightened out.

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1 you came to Powell, Wyoming, from Minnesota.
2 A. About -- we were probably out here for about
3 a year before Tricia and I got married. We got married
4 in -- I believe, June 4th of '05, so around a year
5 before that. Maybe a little less.
6 Q. What brought you to Powell?
7 A. My parents. We wanted to -- if we ever -- we
8 knew we were serious at that point. We wanted to get
9 out of Minnesota and come out here and live with my --
10 or live around my parents. I've always been close to
11 my dad and my mom. And my brother was out here at the
12 time and I've always been close with him.
13 Q. When you say close, and this will sound like
14 a stupid question, but I've got sons, describe for me
15 the relationship that you had with your father.
16 A. I guess it's hard to describe. It's just --
17 I would assume a pretty normal father/son relationship.
18 We go hunting, we shoot trap and skeet, you know. I
19 help work on things with him when he has little
20 projects at home. You know, stuff like that. He helps
21 me work on vehicles.
22 Q. Sounds like -- do you spend a lot of time
23 together?
24 A. Yeah. A decent amount. Especially now. I'm
25 living with him now. So I spend a lot of time with him

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1 Q. At the time of this incident, I assume that
2 your relationship with your father is, as you've
3 described it, close?
4 A. Relatively, yeah.
5 Q. Did you spend a lot of time at his house?
6 A. Yeah, I spent more time at his house than he
7 spent at mine.
8 Q. Why is that?
9 A. Well, for obvious reasons, I was -- I had
10 marijuana plants in my basement.
11 Q. Okay.
12 A. And I didn't want him to know about that.
13 Q. Have you ever had any felony convictions?
14 A. No.
15 Q. Misdemeanors for violence?
16 A. No, no.
17 Q. Drug possession?
18 A. No.
19 Q. Any other misdemeanor convictions --
20 A. The only thing I've ever gotten is I believe
21 one speeding ticket and maybe one for a minor
22 fender-bender in my whole life. Even as a juvenile,
23 never -- this is the only time I've been in trouble.
24 Q. What did your dad know about your mental
25 diagnosis or medical diagnoses that were received in

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1 regards to bipolar and social anxiety disorder?

2 A. As much as he could understand. You know, he

3 knew what bipolar is. He knew on paper what anxiety

4 and stuff like that is. I don't think he can

5 understand -- it's one of those things you have to live

6 it to truly understand what it is. But he tries to

7 understand as best he can.

8 (Exhibits 63 and 64 marked)

9 BY MR. THOMPSON:

10 Q. Did you talk to your father about what

11 happened as a result of the execution of the search

12 warrant?

13 A. Yeah.

14 Q. What did you talk about?

15 A. As far as -- what do you mean by as far as

16 the execution of the search warrant? As far as what

17 happened to Tricia?

18 Q. What happened when the Powell Police

19 Department executed the search, the knock-and-announce

20 search warrant?

21 A. Most of that was -- he knew what happened

22 because, you know, it was pretty obvious. You know, it

23 was not like something we were keeping a secret about,

24 you know, from him after that. You know, he knew what

25 Tricia knew.

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1 Q. The Powell Police Department came to his

2 house and took you into custody?

3 A. Yes, they did.

4 Q. And so he knew about it that evening?

5 A. Yes, he did.

6 Q. Did he say anything? Do you recall him

7 saying anything when the officer came to the house and

8 took you into custody?

9 A. At that point I was kind of really high

10 anxiety, so all I was thinking is -- honestly, all I

11 was thinking is, crap, I've disappointed my dad, you

12 know. Because I have a very high respect for him and I

13 knew that wasn't exactly something he'd be proud of me

14 for.

15 He had conversations when the police walked

16 in with them. But I don't -- I was not listening. I

17 was kind of just thinking of the whole situation, you

18 know.

19 Q. Subsequent to the incident, did he express to

20 you disappointment in your actions?

21 A. Oh, yeah. And -- as a matter of fact, when

22 the police had called and said, you know, is Bret

23 there, they called him, after he got off the phone, I

24 said -- he's like, what the hell is going on here?

25 Excuse my language.

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1 And I said, I have two marijuana plants in my

2 house, that's what's going on.

3 You know, because they had told him they had

4 done a search warrant on my house and that they needed

5 to come out and talk to me.

6 And, of course, he asked me what was going

7 on. And I told him at that point.

8 And he's like, what the hell are you doing?

9 You know, the normal father reaction, I would assume.

10 You know, not too strict at that time because he knew I

11 was already under enough stress, but he had definitely

12 expressed his -- I don't know how to put it.

13 Q. Disappointment?

14 A. Disappointment. You know, why the hell are

15 you doing this, you know, kind of deal; why would you

16 have that in your house? That kind of stuff.

17 At that point it was brief. I got a little

18 more after a couple days.

19 Q. Was that the first time, after the Powell

20 Police Department called and told your father that they

21 were coming to his house, is that the first time you

22 mentioned to him anything about marijuana being in your

23 house?

24 A. Oh, yeah. Yeah, that was definitely the

25 first time. And I -- at that point, I just was

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1 completely honest with him, because the police were on

2 the way out. So I told him, you know, this is what's

3 in my house, this is what's going on.

4 Q. Never had any discussions with him about that

5 prior to that time?

6 A. Oh, no. No, it's not exactly something I

7 wanted him to know about.

8 Q. Let me hand you what's been marked as

9 Deposition Exhibit No. 64. And what I want you to do,

10 Bret, is take a minute to look through those

11 photographs. And there are a number of them there.

12 When you're done, just let me know.

13 A. Look at them?

14 Q. Yes, sir.

15 A. Okay.

16 MR. GOSMAN: Have I been given copies of

17 these pictures?

18 MR. THOMPSON: They are your exhibit.

19 MR. GOSMAN: They are my exhibit? Okay.

20 MR. THOMPSON: They are Exhibit 43.

21 THE WITNESS: Okay.

22 MR. THOMPSON:

23 Q. Do you recognize the items that are in those

24 photographs?

25 A. Yes.

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1 Q. And what are those items?
2 A. Every one?
3 Q. In general. Are those items that were in
4 your residence on the day that the Powell Police
5 Department executed the search warrant which is the
6 subject matter of this litigation?
7 A. Between the house and the garage, yeah.
8 Q. And in those photographs, and feel free to go
9 back through them and look at them, but there is drug
10 paraphernalia, would you agree?
11 A. Yeah, for marijuana, yeah.
12 Q. Including pipes, residue; is that correct?
13 A. Yes.
14 Q. And those are in plain view in the house --
15 or they were in plain view at the time these
16 photographs were taken?
17 A. Well, they were in my bedroom.
18 Q. Well, there are some items that were in the
19 living room, correct?
20 A. Like what?
21 Q. Well, go ahead and go back --
22 A. The only items that were in my living room, I
23 pretty much know this. Some of this is in the spare
24 bedroom, some of it was downstairs, some was -- the
25 only thing that I can think of so far that was in the

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1 living room was the High Times magazines on the
2 bookshelf. And this book. Obviously these books.
3 Maybe this stuff, because at the time we
4 rolled our own cigarettes. That's where all the
5 Zig-Zags came from.
6 More books. That's the rolling papers for
7 cigarettes. I believe the only thing -- yeah, I know
8 the only thing that was in the living room was the
9 stuff on the bookshelf, which was books and items like
10 that.
11 MR. THOMPSON:
12 Q. Okay. And those items --
13 And, Counsel, do you have your exhibit book?
14 MR. GOSMAN: I can sure go get it. I'll do
15 that right now. Can we take just a moment?
16 MR. THOMPSON: You bet.
17 (Recess taken 9:02 to 9:08
18 November 24, 2010)
19 MR. THOMPSON:
20 Q. Bret, your attorney has provided you a copy
21 of a booklet with different exhibits in it. And I've
22 asked you to turn to Plaintiff's Exhibit 23.
23 (Exhibit 23 identified)
24 BY MR. THOMPSON:
25 Q. And I want you to look at, specifically,

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1 those list of items found and collected from the living
2 room, which begins on page 24 and goes over to page 25.
3 Do you see that?
4 A. Oh, I'm on the wrong -- 24.
5 Sorry, I thought it was just that one page.
6 Okay. Bathroom, kitchen.
7 Q. It's at the bottom of the page.
8 A. At the bottom.
9 Q. At the very bottom?
10 A. Oh, okay.
11 Q. And starts there and goes over to the next
12 page.
13 A. That doesn't look like -- don't see it in
14 there. Living room. Okay.
15 Okay.
16 Q. These would have been items that, would you
17 agree, were in the living room?
18 A. I believe so, on the bookshelf, yeah.
19 Q. And would this have been an area of the house
20 that your father would be in when he'd come over to
21 visit you?
22 A. Yeah. Yeah.
23 Q. Did he ever ask you about the High Times
24 magazines?
25 A. Honestly, he never paid attention to the

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1 bookshelf.
2 Q. Okay.
3 A. And if you look at the picture you showed me
4 earlier, you can't -- you can see that there's
5 magazines there, but unless you're going and reading
6 the books, you can't see what they are.
7 Q. Did -- as far as the drug bibles, the --
8 yeah, the drug bibles, the one marijuana book titled
9 The Cannabible, did he ever ask about those books?
10 A. No. And, honestly, a lot of times when I --
11 you know, the whole time I was living there, he
12 probably only came over a few times. Most of that was
13 spent in the garage. And sometimes, I think most of
14 the time I would take that kind of stuff and put it in
15 the bedroom.
16 Q. So is it your testimony, Bret, that you knew
17 when our father was coming to the house?
18 A. Oh, yeah. Yeah, he didn't drop by
19 unannounced. He always called me and made sure I was
20 there and not doing something. Yeah.
21 (Exhibit 24 identified)
22 BY MR. THOMPSON:
23 Q. Let me have you turn to Exhibit 24.
24 A. Okay.
25

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1 Q. And before we do that, let's talk about
2 Deposition Exhibit 63. Tell me if you recognize those
3 photographs.
4 A. Well, I recognize they are of our house.
5 Q. Okay.
6 A. But that's...
7 Q. You didn't take the photographs?
8 A. No.
9 Q. You don't know what the photographs are
10 intended to depict?
11 A. I have a feeling I do, yeah.
12 Q. Okay. What's your assumption?
13 A. My assumption is that - I think it's showing
14 the height of the window to show that they threw a
15 flashbang in without being able to see who was in the
16 bedroom.
17 Q. What's the height of the window?
18 A. I can't tell unless it says
19 MR. GOSMAN: I think the originals do
20 demonstrate.
21 THE WITNESS: Oh, okay.
22 It is 69 inches -- well, that's the base. To
23 actually see in, you're looking at the middle of the
24 window, 75, 76 inches.
25

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1 MR. THOMPSON:
2 Q. The base is how far?
3 A. Where it comes on the trim, it's 69 inches.
4 Q. So less than 6-foot?
5 A. Yeah.
6 Q. So someone 6-foot could see over the top of
7 that?
8 A. They would be able to see the ceiling in the
9 bedroom, but they wouldn't be able to see if anybody
10 was laying on the bed, and I know that.
11 Q. Why is that?
12 A. Because I looked in that window, and you
13 can't see. I'm 6-2 and a half.
14 Q. Are those photographs intended to depict
15 damage to the window?
16 A. I don't know. I think that's maybe after we
17 repaired it. I don't know. It must be, because
18 otherwise it would be pretty broken up.
19 Q. You don't know who that is who is holding the
20 tape measure, do you?
21 A. No, I don't really, honestly. I know it
22 wasn't me. I pretty much stay out of town unless I
23 have to go in to go to the grocery store or something.
24 My wife does the same.
25 Q. Let me have you look at Exhibit 24 if you

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1 would, please.
2 A. Okay.
3 Q. And take a minute to go ahead and review
4 that.
5 A. Okay.
6 Q. Have you had an opportunity to review that?
7 A. Yeah.
8 Q. I'm going to hand you what's been marked as
9 Deposition Exhibit 65 and Deposition Exhibit 66.
10 (Exhibits 65 and 66
11 identified)
12 THE WITNESS: Okay.
13 BY MR. THOMPSON:
14 Q. Is there anything in this document marked
15 Plaintiff's Exhibit 24 that you believe to be factually
16 inaccurate?
17 A. Misleading. A lot of these things that say I
18 harvested like 10 or 17 plants. I have never harvested
19 more than two or three. And most of them ended up
20 dying.
21 Q. Okay. Point to me where you believe there's
22 a statement to that effect that is misleading.
23 A. See, because -- okay. This one is 17 plants.
24 And when I say 17 plants, I'm probably talking about
25 little seedlings, with none of which always live.

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1 Usually half or so die, at least in my experience.
2 Q. And let me stop you as we go through this.
3 You would agree that at times you would have
4 17 plants, whether they are seedlings or full-grown
5 mature plants, marijuana plants; you would have started
6 kits with seedlings growing, correct?
7 A. Yeah, I had seedlings growing, but I never
8 had 17 full-grown marijuana plants never in my life.
9 Q. And I appreciate that and I understand that.
10 But the question is: You would have 17 marijuana
11 plants going at one time or -- whether they are
12 full-grown marijuana plants or seedlings, there were 17
13 plants?
14 MR. GOSMAN: Asked and answered, object to
15 form.
16 BY MR. THOMPSON:
17 Q. Go ahead.
18 MR. GOSMAN: Or asked and answered. I don't
19 have an objection to form. Sorry.
20 THE WITNESS: Yeah, seedlings, yes.
21 MR. THOMPSON:
22 Q. Okay. Go ahead and tell me what else in
23 there you believe to be misleading or inaccurate.
24 A. I've never harvested four plants in Park
25 County, Wyoming, as far as I remember. I don't believe

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1 that I ever -- four of them came to that.
2 I believe the most I ever had at once that
3 were harvested plants were one, two, maybe three, and
4 they were always pretty small
5 It says that there's eight more plants that
6 were seized before harvesting That's untrue. They
7 seized two marijuana plants.
8 Q. Where do you see that?
9 A. Third paragraph, almost all the way down at
10 the bottom of the third paragraph. It says the grow
11 started with three plants, then log refers to starting
12 ten more plants which resulted in eight plants
13 germinating. These plants were seized before they
14 could be harvested.
15 If you're referring to the three, only two of
16 them were confiscated, because I only had two. And the
17 other ones died and were not confiscated.
18 Q. Did you have -- let me ask you this: Would
19 the grow log that you kept -- you did keep a grow log,
20 correct?
21 A. Yes.
22 Q. You kept a grow log both in Minnesota as well
23 as a grow log in Wyoming?
24 A. Yes.
25 Q. And you kept a grow log which included

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1 entries the month prior to the execution of the search
2 warrant?
3 A. Yeah.
4 Q. And that grow log would indicate the number
5 of plants that you would have at any given time?
6 A. Yeah.
7 Q. And would you agree that that grow log --
8 sitting here today, that grow log would probably be a
9 more accurate reflection of the number of plants that
10 you had at that time?
11 A. At the time before the -
12 Q. At the time the entries were made in the grow
13 log.
14 MR. GOSMAN: More accurate about what?
15 Object to form.
16 BY MR. THOMPSON:
17 Q. More accurate than his memory, testifying by
18 memory today.
19 A. I'm sure, yeah.
20 Q. Did you have ten or more plants in the month
21 of January 2009?
22 A. More than ten?
23 Q. Ten or more.
24 A. Ten or more. I believe, seedlings, yes.
25 Q. Bret, let me have you look at the deposition

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1 exhibits that are set forth in front of you.
2 A. Okay. Which ones?
3 Q. What's the numbered one, the thicker one?
4 A. The thicker one?
5 Q. Yeah. What's the number on that?
6 A. Sixty-five.
7 Q. Okay. We're looking at Deposition Exhibit
8 No. 65. Take a minute just to leaf through that and
9 tell me what that is.
10 A. Okay.
11 Q. And as you're going through that, the
12 question that I have for you is: Do you believe that
13 to be an accurate and true copy of the grow log that
14 you kept both in Minnesota as well as in Wyoming?
15 A. So far I believe so, yeah.
16 Q. And if you find any inaccuracies as you're
17 going through it, would you please point those out to
18 me?
19 A. Well, it's all photocopied, and I don't think
20 there are any inaccuracies. Because I know I looked at
21 this before right after the fact.
22 Okay.
23 Q. Do you believe that to be a true and correct
24 copy of the grow log that was maintained by you, both
25 in regards to the grow operation that you had in

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1 Minnesota as well as that one in Wyoming?
2 A. Yeah.
3 Q. And let me have you turn to the first three
4 pages -- actually, that is the first three pages --
5 marked Defendant's Exhibit 675, 676 and 677.
6 A. Okay. So the first three pages. Okay.
7 Q. Can you tell me what this depicts?
8 A. This is random thoughts of ideas as far as
9 what -- random thoughts, you know.
10 Q. Okay. 675 has a 3-foot by 7-foot schematic
11 on it; do you see that, 675, first one?
12 A. Oh, I'm sorry. Yes.
13 Q. And is that the size of the area in the
14 basement where you were growing marijuana?
15 A. No.
16 Q. Okay.
17 A. That was much smaller.
18 Q. This has basement wall and indicates also
19 under stairs, does it not?
20 A. Yes.
21 Q. Was this your depiction of that area?
22 A. Maybe it is 3-by-7. Maybe that is 3-by-7
23 area under there. That could be possible.
24 MR. GOSMAN: Where did that number come from,
25 3-by-7?

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1 MR. THOMPSON: It's on the document. 3-foot,
2 7-foot.
3 BY MR. THOMPSON:
4 Q. Is this a depiction of that area underneath
5 your stairs --
6 A. Yes, it is.
7 Q. -- at the house where the execution of the
8 search warrant took place?
9 A. Yes.
10 Q. Let me have you turn to 676.
11 A. Okay.
12 Q. And this also shows 3-foot by 7-foot, about,
13 which would be the same --
14 A. Sure.
15 Q. -- size as that description on the previous
16 page; would you agree?
17 A. Yeah.
18 Q. And so was this your plan for that area
19 underneath your stairs at the house?
20 A. You know what I would do --
21 Q. Let me finish the question.
22 A. Oh, I'm sorry, I thought you were finished.
23 Q. Was this a description of that area
24 underneath the house that was -- the search warrant was
25 executed upon?

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1 A. Yes.
2 Q. Let me have you turn to the third page, 677.
3 Was this also depicting that area underneath
4 the house?
5 A. As far as I know. It looks like that's
6 possible. It says 3-by-6 feet there. I can assume so.
7 Q. Is that your handwriting on document 677?
8 A. Is that the one I'm looking at here?
9 Q. Yes.
10 A. Yes.
11 Q. And it says this -- "With this setup, I will
12 be able to grow six 3-foot tall plants that will
13 produce at least three ounces each. The fluorescent
14 lights will help grow big buds toward the middle of the
15 plants, and the 400-watt light will grow big buds on
16 the top."
17 Was that your plan?
18 A. I don't want to say that's my plans. What I
19 did is, is I just kind of wrote things down as I
20 thought of them. It wasn't necessarily something that
21 I had planned on doing. It was something that I was
22 just more or less a random thought and me being bored.
23 I didn't have any plans to go forth with most of these
24 things.
25 Q. Do you know when these diagrams were made in

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1 relation to the execution of the search warrant?
2 A. I don't.
3 Q. Was it during a time when you weren't smoking
4 marijuana?
5 A. I don't know. I don't know the date.
6 Q. Let me have you, if you can, turn -- it
7 starts after it says "my green book." And it's the
8 spiral bound section of the exhibit.
9 A. Okay.
10 Q. And I want you to go to the entries that
11 begin on the right side of the document with 2/14/09.
12 A. Okay. Okay.
13 Q. On the entry 2/14/09, it states, "Three
14 plants are going very well under HPS. And I believe
15 they are at the beginning of showing sex."
16 Do you see that?
17 A. Yes.
18 Q. Are these the three mature plants that you're
19 referring to?
20 A. Let me see. 2/14/09. Yeah. They were -- at
21 that point I had three, from what it looks like, and I
22 was just being able to distinguish male from female, is
23 what I get from that entry.
24 Q. Bret, let me have you take a look at that
25 other deposition exhibit, which is marked --

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1 Counsel, is it 66?
2 MR. GOSMAN: Yes.
3 BY MR. THOMPSON:
4 Q. Are those plants in those photographs the
5 mature plants that were referenced in the grow log
6 dated 2/14/09?
7 And I'd represent to you that that is
8 photographs of the marijuana plants that were taken out
9 of your residence after the execution of the search
10 warrant.
11 A. Okay. And the search warrant was what date,
12 on the 9/24?
13 Q. The 24th.
14 A. Twenty-fourth of?
15 Q. Of February.
16 A. February. So that would be one.
17 Q. So this would be -- the entry would be
18 approximately a month or ten days prior to?
19 A. Yeah. So that makes sense, these two would
20 be referring to these.
21 Q. And actually, there were three plants --
22 three mature plants at the time you made this entry?
23 A. Yeah. One was -- yes.
24 Q. And in addition to the three mature plants,
25 one of which is reflected in Deposition Exhibit 66, you

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1 had eight seedlings that were started?
2 A. Yes.
3 Q. And on the 16th of February, 2009, which
4 would have been approximately eight days prior to the
5 execution of the search warrant, the eight seedlings
6 were approximately four inches tall each?
7 A. It seems that way, yeah.
8 Q. So there were, at least by the description
9 set forth in the grow log, there were at least 11
10 plants described in this document.
11 A. Yes.
12 Q. And you wouldn't dispute that?
13 A. No.
14 Q. Was there ever any intent, Bret, to use any
15 of the marijuana that you were growing to sell?
16 A. No. And I have never sold marijuana in my
17 life, or any other drugs.
18 Q. Let me have you turn -- it's second from the
19 last document in that exhibit.
20 A. This one here?
21 Q. Yes.
22 A. Are we looking at the same thing? This one
23 isn't labeled as far as numbers
24 Q. Top of the left side of the document states
25 "If thou seek him, he will be found of thee," 1

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1 Corinthians?
2 A. Yes, sir.
3 Q. Do you see that?
4 A. Yes.
5 Q. Is this your handwriting on that document?
6 A. Yeah. Looks like it.
7 Q. What are these numbers reflective of?
8 A. They are reflective of me trying to figure
9 out how much I would get from -- not how much, what I
10 would grow would be worth. And not for selling
11 purposes, but for -- not buying anything purposes.
12 Q. Okay.
13 A. Just I have a tendency, and I've been told
14 this, I write things down, random thoughts. I crunch
15 numbers in my head. And I just write them down, you
16 know, to get them out.
17 Q. So if I understand you correctly, these are
18 entries concerning how much the marijuana is worth?
19 A. Yeah. Yeah.
20 Q. And, for example, you have \$400 per ounce at
21 \$50, correct?
22 A. That's what it looks like, yeah. I'm not
23 sure if I understand what I wrote there, but, yeah.
24 Q. And so those are valuations that you put on
25 that document of the marijuana that you were growing?

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1 A. Well, it was of the anticipated amount that I
2 would get. And that always was overstated by me. I
3 always thought that I was going to end up with more
4 than what I did. I would end up with a fraction of
5 what I thought I would.
6 Q. And let me have you go two documents back
7 towards the front of the document.
8 A. Is this what we're looking at here?
9 Q. It starts the top of the -- well, it's marked
10 Defendant's Exhibit 000711.
11 A. Oh, yes, okay.
12 Q. And are these also calculations on the
13 valuation of the plants on the left-hand side of the
14 document?
15 A. Left side. Yeah, I would say similar thing
16 to -- yeah, estimations as to things before things
17 would come to fruition.
18 Q. What is the valuation set forth -- or the
19 reference, excuse me, to the pills on the right-hand
20 side of the document?
21 A. I don't really know. It could be me keeping
22 track of my medications, it could be all sorts of
23 things like that. As far as I know, that would be my
24 guess.
25 Q. And tell me, is that your handwriting?

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1 A. Yes, it is. Most of it. The sent payment
2 thing is my wife's handwriting.
3 Q. Now, let me have you go to two more documents
4 towards the front. It's marked Defendant's 709.
5 A. 709, yep.
6 Q. Do you see the price list?
7 Can you tell me whether or not that relates
8 to marijuana valuation?
9 A. I very much doubt it. That does not look
10 like it. My guess is if you look at the piece to the
11 right, it had price valuations as to speakers and
12 things that I wanted to buy that were not illegal. Two
13 three-way 6-by-9 speakers. Two 6-by-9 speaker boxes,
14 one 12-inch sub --
15 Q. That's okay. I understand. They are related
16 to what you believe to be --
17 A. I believe so, yeah.
18 Q. -- speakers.
19 Now, let me have you go to Defendant's 000708
20 and ask you to look at the entry on the left-hand side
21 of the document dated 4/3 of 2006.
22 A. It's on the left hand?
23 Q. Yes. And I want you to look through that and
24 then tell me whether or not, one, that's your signature
25 at the bottom of the entry, and, two, whether or not

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1 that's your handwriting?

2 A. It is my signature and it is my handwriting.

3 Q. You told me earlier that you did not have any

4 substance abuse issues.

5 A. Yes.

6 Q. And the first statement in this document is

7 "we both are very addicted to narcotics and we need to

8 slow down."

9 A. Yeah.

10 Q. Does this document refresh your recollection

11 in regards to the answer that you provided prior?

12 A. Well, I believe I was referring to marijuana

13 with that, because at that time, I did believe I

14 smoked.

15 You know, a lot of these journal entries were

16 things that I had been told to do by my doctor, to

17 write random thoughts. And that's mostly exactly what

18 they are, is things off the top of my head.

19 Q. Okay. But we agree that the document is

20 accurate and it's a true and correct copy of the

21 entries that you made, correct?

22 A. Yes.

23 Q. And it's reflective of those entries as they

24 were made on the dates indicated?

25 A. If I understand you correctly, yeah.

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1 Q. What are "I need to start to cut down a lot.

2 I have nine 80s left and we don't get a refill until

3 the 27th or the 28th? That wouldn't be a reference to

4 marijuana, would it?

5 A. No. That wouldn't make sense. I honestly

6 don't know what that's reference to.

7 Q. What are my fives and tens?

8 A. I guess it would be some sort of my

9 medication. Over the years I've been on probably 50

10 different medications.

11 Q. Are those references to hydrocodone?

12 A. No.

13 Q. Were you aware of packages that were being

14 received from Patricia Neukom?

15 A. Yes.

16 MR. GOSMAN: Object to form.

17 BY MR. THOMPSON:

18 Q. How frequently were those packages sent to

19 your house?

20 A. I don't know. Her mom would send, you know,

21 kind of random weird little gifts and things like that

22 to Tricia.

23 Q. Did the gifts include stuffed animals?

24 A. Some of them, yeah. A lot of them were for

25 sentimental, some of them, because her dad and brother

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1 had passed and her brother, Joey, was living at the

2 house with her mom at the time. And we were afraid he

3 was going to, you know, do something with some of the

4 more sentimental things. Because she doesn't have a

5 lot from her dad or brother, as far as sentimental

6 things to remember him by. And most of the packages

7 were stuff like that.

8 Q. There's a photograph, and we can take a

9 minute and I can find it, of you holding a sheriff's

10 card from Minnesota.

11 A. Yeah.

12 Q. Have you seen that photograph before?

13 A. Yes, I have.

14 Q. Can you tell me what that is?

15 A. Yes, I can. I was probably about 14, 15, and

16 I was in Boy Scouts, and we toured the sheriff's office

17 and because I knew the police officers, because my dad

18 was a deputy, they chose me to take the picture.

19 That's what that is.

20 (Exhibit 20 identified)

21 BY MR. THOMPSON:

22 Q. Bret, let me have you turn to Exhibit No. 12.

23 A. Where are we going here?

24 Q. Excuse me, it would be Exhibit 20.

25 A. Okay.

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1 Q. Did you have someone -- and I don't want to

2 note person's name, but did you have someone living

3 with you from December 2008 through January of 2009?

4 A. We had someone living with us, but I'm not

5 exactly sure of the exact dates he was living with us.

6 I know he was probably there at that time but I don't

7 know the exact dates.

8 Q. Okay. Did you ever smoke marijuana with this

9 person?

10 A. Yes.

11 Q. Was this person who was living with you, did

12 he have access to the entire house?

13 A. I think so.

14 Q. Would he have been in the house at times when

15 neither you or your wife were in the house?

16 A. Very rarely, because I was home all the time.

17 Q. Would there have been times where he was in

18 the house where neither you or your wife were in the

19 house?

20 A. I really don't think so, because I was home

21 all the time. The only time -- and usually it was one

22 of us would run to get some fast food or something.

23 And I would be there.

24 Q. Did you discuss with him your marijuana grow

25 operation?

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1 A. Yeah. He was living with us and, you know,
2 he knew full well about the two plants I had
3 downstairs.
4 Q. Well, at the time that he was living with
5 you, if it was January of 2009, it would have been more
6 than two plants.
7 A. It would have been the three and then the
8 seedlings, yeah.
9 Q. Thirteen?
10 A. I guess, yeah.
11 Q. Did you at that time have fluorescent lights
12 in your house for growing the marijuana?
13 A. Yes.
14 Q. Did you have a timer and other lights that
15 you had purchased that he was aware of?
16 A. Yeah.
17 Q. Did you tell him that you had researched
18 growing methods and techniques on the Internet?
19 A. No.
20 Q. Did you tell him you possessed marijuana
21 growing guide books?
22 A. I'm sure he knew that.
23 Q. Did he see the plants downstairs
24 underneath -- in the basement underneath the stairs?
25 A. I'm sure he did, yeah.

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1 Q. In the documents, photographs that I have
2 shown you, there is some Kilz. Did you see that photo?
3 A. Oh, the paint? Yes.
4 Q. Was that for the marijuana grow operation?
5 A. It was to paint the walls downstairs. So I
6 don't know if it was part of the marijuana grow
7 operation. I know it was just to paint the walls
8 downstairs.
9 Q. Did the room where the marijuana was growing
10 have Kilz on the walls?
11 A. Yes. But it was an outside wall, so I wanted
12 to paint it.
13 Q. Was he aware of the packages that were being
14 sent from Patricia Neukom?
15 A. I don't know how aware he was. I know he
16 knew that we got stuff in the mail as far as packages
17 from her mom. About usually that was kind of -- you
18 know, that wasn't his deal. You know, it was my wife's
19 and her mother's.
20 Q. Were those packages delivered to the house?
21 A. Yeah.
22 Q. Was this individual -- did he leave the house
23 of his own free will or was he kicked out of the
24 residence?
25 A. He was kicked out of the residence.

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1 Q. Was there ever a time where this individual
2 that was living with you brought other individuals into
3 the home?
4 A. One time. And my wife and I were sleeping.
5 And the rules of the house were that you don't bring
6 strangers or drugs into our house.
7 Q. Okay.
8 A. And at that time, we woke up and we said,
9 hey, what are you doing, we don't know these people?
10 And you know that.
11 And he interpreted it as, well, as long as
12 you're home, I can bring them.
13 But we were sleeping. And we told him we
14 wanted to meet anybody that he brought over. You know,
15 because we don't know people around here in the area.
16 Q. Why did you want to meet people that he
17 brought over? What was the reason for that?
18 A. Because I don't want people stealing from me,
19 stealing stuff from the house. I don't know who he
20 knew. I didn't know him that well. My wife didn't
21 know him that well.
22 Q. As part of your diagnosis and treatment for
23 bipolar disorder, have you ever been diagnosed as being
24 paranoid?
25 A. No.

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1 Q. Have you ever been diagnosed as being
2 schizophrenic?
3 A. No.
4 Q. During the time when this individual brought
5 other persons into your home, were there seedlings on
6 the kitchen table of marijuana plants?
7 A. I don't think so, no.
8 Q. Could there have been?
9 A. I don't think so. I really don't. Just
10 wouldn't make sense.
11 Q. At the time this individual was living with
12 you, did you have handguns in the house?
13 A. Yeah.
14 Q. Were those handguns loaded?
15 A. Not all of them.
16 Q. Were they set out in the house at different
17 locations or were they all --
18 A. They were all in the bedroom. When he lived
19 there, they were all in the bedroom.
20 Q. Why did you -- you don't hit me as a type of
21 guy that would have handguns. Why do you have
22 handguns?
23 A. I enjoy target shooting.
24 Q. Okay.
25 A. I just enjoy guns. I've been raised around a

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1 family of police. I've known -- I've shot my whole
2 life, you know. I just enjoy shooting, you know,
3 target shooting and things like that.
4 Q. What guns do you have that are registered in
5 your name?
6 A. I don't know if any of them are.
7 MR. GOSMAN: Object to form.
8 MR. THOMPSON:
9 Q. Are there -- the guns that you have that were
10 in the house, are those your weapons or are they
11 somebody else's weapons?
12 A. Some of them are mine. Most of them are mine
13 and my dad's.
14 Q. Can you buy a weapon with a diagnosis of
15 bipolar disorder?
16 A. Oh, yeah.
17 Q. And have you bought weapons before?
18 A. No.
19 Q. How do you know that you can buy a weapon
20 with bipolar disorder?
21 A. Because I don't see why I wouldn't be able
22 to. It just doesn't make any sense. I guess I don't
23 know it as a fact, but it just wouldn't make sense that
24 I couldn't own weapons.
25 Q. Okay. Have you ever owned an assault rifle?

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1 A. No.
2 Q. Have you ever shot an assault rifle?
3 A. Probably, yeah.
4 Q. Whose assault rifle do you believe you've
5 shot?
6 A. When I was younger back in Minnesota,
7 probably my dad's. I don't know if it was an assault
8 rifle or just a semiautomatic long rifle. I don't
9 know. It depends on your definition of assault rifle.
10 Q. Semiautomatic weapon.
11 A. Yeah, but I have hunting guns that are
12 semiautomatic weapons. Is that what you consider an
13 assault rifle?
14 Q. A semiautomatic weapon that would have a
15 caliber that wouldn't be suitable for hunting animals
16 in the state of Wyoming, hunting big game animals?
17 A. Like a .223 --
18 Q. Yeah.
19 A. Or something like that?
20 Q. Yeah.
21 A. I've shot a .308 semiautomatic, a .300 mag
22 semiautomatic.
23 Q. A-4?
24 A. Huh?
25 Q. A-4?

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1 A. I don't know what that is.
2 Q. M-4?
3 A. I'm not familiar, I'm sorry.
4 Q. AR-15?
5 A. I don't believe so, no. I've seen these
6 guns, but I don't really shoot them. They are my
7 dad's. The only guns of my dad's that I shot, for the
8 most part is what I had at the house.
9 Most of them were for hunting, target
10 shooting with the shotgun and bird hunting and then
11 just enjoyment shooting with the pistols.
12 Q. Did you ever have a photograph taken of you
13 where you were -- you had a bulletproof -- or ballistic
14 vest on?
15 A. No, and as a matter of fact, I've never worn
16 in my life any sort of body armor.
17 Q. Would there be a reason that you'd have body
18 armor in your home?
19 A. Yeah. I had a bulletproof vest of my dad's
20 that was probably from the '80s, kind of a sentimental
21 thing. I had it hanging in my closet. You know, it
22 was one that was old and my grandmother had done work
23 to it to make it more comfy for him, and he didn't need
24 it and it was just kind of something that -- you know,
25 it was my dad's, and I had it.

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1 Q. In the photographs that I've handed you, the
2 large packet of photographs.
3 A. That would be this? Oh, this.
4 Q. And deposition exhibit is what number?
5 A. Sixty-four.
6 Q. There is a methamphetamine and THC test kit
7 in there. Do you see the photograph?
8 A. I have seen it and I know I saw it when I was
9 thumbing through.
10 MR. GOSMAN: Don't bother, then.
11 THE WITNESS: Okay.
12 BY MR. THOMPSON:
13 Q. Where did you obtain that from?
14 A. My guess would be that they found that in my
15 garage. My dad and my brother -- maybe not my brother
16 at that time because he had moved, but -- into his own
17 house, had stored things in my garage.
18 And not to mention, I had stored things at
19 his place. And the transference of things, I'm sure
20 that's how they got there.
21 As far as I remember, I've never seen them
22 before you guys took pictures of them.
23 Q. Is your brother in law enforcement?
24 A. No. He's a -- an emotional behavioral
25 disorder teacher and is now going for his doctorate in

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1 Missouri.
2 Q. So you believe that test kit to be your
3 dad's?
4 A. Yeah.
5 Q. Let me take a minute, and we'll see where
6 we're at.
7 (Recess taken 9:51 to 9:58
8 a.m. November 24, 2010)
9 BY MR. THOMPSON:
10 Q. Bret, I want you to go back and look at
11 Plaintiff's Exhibit 24. I don't believe there was a
12 question pending.
13 A. Okay.
14 Q. And I think we've gone through most of this
15 in regards to the grow logs, and you agreed that the
16 grow logs that I showed you were, in fact, true and
17 correct copies of the grow logs that you maintained,
18 correct?
19 A. Yes.
20 Q. And I want to start with that paragraph that
21 states a third grow log was documented by Bret,
22 starting on 1/4/09, it's the third paragraph about the
23 middle of the page. Do you see that?
24 A. I'm looking through it, yes.
25 Q. Would you agree with me that as part of the

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1 grow operation you had soil, fertilizer, watering
2 tools, lighting and pruning tools?
3 A. Yes.
4 Q. And did you have in your home photographs
5 showing marijuana that you had harvested?
6 A. I believe so from a long time ago, yeah.
7 Usually one plant.
8 Q. So is the information contained in Deposition
9 Exhibit 24, to the best of your knowledge, is it
10 accurate?
11 MR. GOSMAN: Asked and answered.
12 MR. THOMPSON: That was a different exhibit.
13 MR. GOSMAN: Oh, well, all right. The record
14 will stand for itself, I guess.
15 THE WITNESS: The part that says Bret with
16 marijuana plants and Bret holding large amounts of
17 harvested marijuana, what do you consider large amount?
18 Because I have never had a large amount of
19 marijuana. The pictures shown are well under an ounce.
20 If that's a large amount, then, yes, but...
21 BY MR. THOMPSON:
22 Q. The pictures obviously can't indicate how
23 much weight-wise marijuana you're holding, right?
24 A. Yeah, but you can tell it's not much.
25 Q. Okay. Anything else?

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1 A. Read the last little part.
2 Yeah, okay.
3 Q. The individual who was living with you who
4 was kicked out --
5 A. Yes.
6 Q. -- I believe that you provided information
7 that he called you the day that the warrant was
8 executed; is that correct?
9 A. Yeah, when they were interrogating me.
10 Q. And what did he tell you?
11 A. After I told him that?
12 Q. No. The individual that you had kicked out,
13 what --
14 A. He left a message on my phone, 'cause it was
15 a number I didn't recognize, so I didn't answer. He
16 just very angrily and with much vulgarity said that he
17 had turned me in for pot.
18 Q. Okay. Did he tell you that he was turning
19 you in for illegal guns, meth, pipes and pot?
20 A. Maybe the pipes, but not anything with meth
21 or guns. It was the pot.
22 Q. Let me have you --
23 A. I don't think he brought up pipes. I think
24 it was just the pot.
25 Q. Let me have you turn to Deposition

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1 Exhibit 39. And let me have you go down to about
2 halfway through this document.
3 (Exhibit 39 identified)
4 MR. THOMPSON: And, Counsel, I notice that it
5 does reference the name in the document, so we probably
6 need to seal this also, redact it and seal it.
7 MR. GOSMAN: I would prefer that we redact it
8 rather than seal it.
9 MR. THOMPSON: Okay.
10 BY MR. THOMPSON:
11 Q. And I don't want you to mention the name of
12 the individual set forth because there's an order of
13 the Court that addresses that, but do you see where it
14 says, Wachsmuth informed us that he had received a
15 message from -- we'll say CI -- that stated, quote, get
16 your shit out of the house, I'm turning you in for
17 illegal guns, meth, pipes and pot?
18 A. I'm looking.
19 Okay. Yeah, I see that.
20 Q. Does that accurately reflect what you told
21 Officer Brown --
22 A. No.
23 Q. -- on February 24, 2009?
24 A. No, it doesn't. There's a number of things
25 in here that are inaccurate.

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1 Q. Well, and I just want to talk about that
2 statement.
3 A. Okay.
4 Q. Does that accurately reflect what you told
5 Officer Brown on February 24, 2009?
6 A. No, it does not.
7 Q. Why is that?
8 A. Because I didn't say -- I'm sorry, this is --
9 I didn't say illegal guns, meth pipes, but I did say
10 pot. That's all added in by Mr. Brown, along with the
11 other things that he decided to add in on his things
12 that are complete lies.
13 Q. Did the phone call that you received from
14 this person occur at 1:42 p.m. on the 24th of February,
15 2009?
16 A. I honestly don't know the exact time. It did
17 happen on the day, I believe, of the warrant, but I
18 don't know the exact time.
19 Q. Did you show Officer Brown your cell phone?
20 A. They -- at the time they are like -- when I
21 had told them that he had called me, they were up in
22 arms wondering what was going on, and they had asked if
23 I could show him the cell phone.
24 I said he had left me a message.
25 And then the other officer asked the other

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1 officer, can we just get the records? And then the
2 other officer said, No, we need a search warrant for
3 that.
4 So, no, they didn't see it because it wasn't
5 on my phone. And it would have been on my phone
6 records maybe. But, you know, they didn't pursue it
7 any farther than that.
8 Q. Well, your cell phone that you had at that
9 time would have showed if you would have had a missed
10 call, wouldn't it have?
11 A. Possibly. I would have allowed them to look
12 at it, but I don't know if -- I don't remember if they
13 looked at it or not. But all I told them is I know I
14 deleted the message.
15 Q. You do not remember if they looked at the
16 phone?
17 A. No, I don't.
18 Q. Now, the photographs that we looked at
19 earlier?
20 A. The big pile here?
21 Q. Yes.
22 A. Sixty-four.
23 Q. Sixty-four showed various handguns laying
24 throughout the house, would you agree? Two in the
25 bedroom?

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1 A. It shows them that way, yeah.
2 Q. And I'd represent to you that the testimony
3 of the officers is those photographs accurately depict
4 the guns as they were found when the search warrant was
5 executed. Do you have any reason to debate that?
6 A. Yes.
7 Q. And why is that?
8 A. Because I didn't leave my guns scattered
9 around the house.
10 Q. Okay.
11 A. The only gun that wasn't in the bedroom was
12 the .22, and that was on the bookshelf.
13 Q. Was it loaded?
14 A. I don't remember. It may have been.
15 Q. Were the other guns loaded?
16 A. Not all of them. Some of them were. The
17 pistols.
18 Q. Pistols were loaded?
19 A. Not all of them.
20 Q. Which ones were loaded and which ones
21 weren't?
22 A. I believe the .357 and .45 were loaded.
23 Q. Was the .22 loaded?
24 A. I really don't know.
25 Q. Why did you have the .357 and the .45 loaded?

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1 A. You know, I really don't know. I think, what
2 good is an unloaded gun? I mean, it's for shooting.
3 It was -- we had no kids in the house, ever. It wasn't
4 a safety risk. It was in our bedroom. So that's
5 pretty much the best explanation I can give on that
6 one.
7 Q. Did you ever tell your father about the
8 confidential informant?
9 A. What do you mean?
10 Q. About the fact that you had received a call
11 that he was turning you in to the police.
12 A. No.
13 Q. Never did?
14 A. No. No. The only time he knew anything
15 about that was after the police called him when I was
16 at his house. And I didn't tell him even then. I just
17 told him what was in my house, 'cause it was kind of
18 just a, boom, boom, boom, this is what's in my house,
19 this is what's going on.
20 Q. Let me have you go to the last paragraph in
21 Deposition Exhibit 39, starts with "Wachsmuth stated
22 that he went to his father's house prior to being
23 arrested to work on his vehicle."
24 You would agree that that's an accurate
25 statement of what occurred on February 24, 2009?

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1 A. That's saying that I stated that I went to my
2 dad's house to work on my vehicle? I don't think so.
3 I went over there just to see my dad, just to visit.
4 The vehicle that was being worked on at the
5 time was at my house, on ramps in my garage. I drove
6 the 1999 Chevy Blazer.
7 Q. And it states "He was there for approximately
8 50 minutes before the police arrived.
9 "He stated that he mentioned to his father
10 about the phone message from Bessler, but his father
11 did not say anything.
12 A. That's not true.
13 MR. THOMPSON: Okay. I don't have any
14 further questions for you, Mr. Wachsmuth. Ms. Westby
15 may.
16 MS. WESTBY: Just a couple.
17 CROSS EXAMINATION
18 BY MS. WESTBY:
19 Q. I'm sure, since you've been dealing with your
20 psychological condition for many years, that you're
21 pretty well aware of what goes along with that
22 disorder. Is that accurate?
23 A. Yeah.
24 Q. Would you agree that paranoia is commonly
25 associated with bipolar disorder?

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Cross-Examination by Ms. Westby

1 A. No.
2 Q. You don't?
3 A. No, and neither does my doctor in my case.
4 Q. Have you ever read that in the literature
5 about bipolar disorder?
6 A. Not as far as I know, no.
7 Q. Okay. Is it true that Tricia has
8 psychological issues as well and had them prior to this
9 incident?
10 A. She has psychological issues resulting from
11 this incident. Before this incident, she had
12 depression due to the death of her father and her dying
13 mother and the death of her brother.
14 Q. Okay. And would you agree that at points in
15 your journal you've described that as severe depression
16 prior to this time?
17 A. Yeah, when we were at her mother's house,
18 when we were helping her out, her dad and brother died
19 in that house so that kind of brought out a lot of the
20 depression, yeah.
21 Q. And were those events, those deaths and then
22 I think -- well, I guess the death of her brother and
23 father and the illness of her mother, were those
24 upsetting and difficult events for her?
25 A. Of course, yeah.

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1 Q. Okay.
2 A. It would be for anybody.
3 Q. And she had been on medication for those
4 conditions, correct, when you guys were in Minnesota?
5 A. I don't think so. Maybe. I can't say for
6 sure. But I don't think so.
7 Q. What about here prior to the incident?
8 A. Yeah. She was on a few antidepressants that
9 didn't work out for her because the side effects were
10 worse than the depression, so she pretty much
11 discontinued them.
12 Q. And would it be accurate to say that clear up
13 to immediately prior to this event, she was being seen
14 and they were trying various medications for her
15 depression?
16 A. I don't know if I'd say clear up to. There
17 was times when she would go in because it got worse,
18 but it wasn't ongoing treatment that was going on for
19 long periods of time.
20 This was the type of thing where when it
21 would get bad, she would go in. And they would try to
22 treat her and the medications often would have bad side
23 effects, keep her awake at night, things like that. So
24 she discontinued them and it was better.
25 Q. So your testimony, then, is that when things

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Cross-Examination by Ms. Westby

1 got bad, she would go into the doctor to seek
2 treatment?
3 A. Yeah. Yeah.
4 Q. So if the medical records indicate that she
5 was going in immediately prior to this incident, that
6 would indicate that she was seeking treatment at that
7 point in time?
8 MR. GOSMAN: Object to the form of the
9 question.
10 BY MS. WESTBY:
11 Q. Is that accurate?
12 MR. GOSMAN: And don't speculate.
13 THE WITNESS: Can you repeat that, please?
14 I'm sorry.
15 BY MS. WESTBY:
16 Q. If she was going into the doctor shortly
17 before this incident occurred and various medications
18 were being tried, would it be fair to say that she was
19 seeking treatment for her depression at that point in
20 time?
21 A. Yes.
22 Q. Okay. Tell me about the stuffed animals that
23 were found in the search.
24 A. What do you want to know?
25 Q. I want to know why they were cut open.

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Cross-Examination by Ms. Westby

1 A. Okay. This is something my wife didn't talk
2 to me a lot about because she was embarrassed about it.
3 When we got together, she -- after the death of her
4 father and brother and the accident of her other
5 brother, she was depressed, as anybody would be, and
6 she would, you know, cut herself. And instead of doing
7 that, she promised me that she would not do that when
8 we were together.
9 So I guess that's what she used to, you know,
10 just to kind of get her mind off of what was going on
11 as far as that goes.
12 Q. What were the cut stuffed animals doing in
13 the box?
14 A. A lot of times she'd send them back to her
15 mom to sew them up because, unfortunately, she didn't
16 choose the best ones. Some of them were sentimental as
17 far as either from her -- sentimental from her mom or
18 from her dad or brother.
19 Q. When you and Tricia were living with Tricia's
20 mother in Minnesota, did you and/or Tricia ever take
21 any of Tricia's mother's medication?
22 A. No.
23 Q. Never?
24 A. No.
25 Q. Have you ever used cocaine?

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Cross-Examination by Ms. Westby

1 A. As a teenager, experimented, yeah.
2 Q. How often?
3 A. Probably about two times.
4 Q. When was the last time?
5 A. Well before Tricia and I knew each other.
6 Early teens, 16, 15, 16.
7 Q. What's in an 8-ball?
8 A. An eighth of -- an eighth of an ounce.
9 Q. Of what?
10 A. Of cocaine or powder or whatever.
11 Q. Have you ever used methamphetamine?
12 A. No.
13 Q. Never?
14 A. Never, ever.
15 Q. Any other illegal substance?
16 A. Besides what I just told you about, I've used
17 things as a teenager, briefly experimentation type
18 things.
19 Q. What?
20 A. I tried LSD, I tried cocaine and marijuana.
21 Q. Anything else?
22 A. No.
23 Q. At the time -- well, at any time during the
24 year that you owned this house were you late on your
25 mortgage payments?

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Cross-Examination by Ms. Westby

1 A. No.
2 Q. Never?
3 A. Never.
4 Q. What were your mortgage payments?
5 A. Gosh, it was a while ago. Five, 600 bucks,
6 550, somewhere in that ball park.
7 Q. Obviously, you did some work to the house
8 after you bought it in terms of putting in the new
9 floor in the living room.
10 A. Yeah.
11 Q. What other work did you do to the house?
12 A. That's it.
13 Q. What shape was it in when you bought it?
14 A. Good shape. Good shape. We just wanted to
15 change the living room look pretty much with the
16 flooring. And it did look much nicer. Because I don't
17 remember -- I believe it was carpet. And the carpet
18 was not the best shape. But it wasn't horrible at the
19 time.
20 Q. In addition to those documents that you're
21 going to give to your attorney about the house, would
22 you also include with that the appraisal?
23 A. I'll include the appraisal, okay.
24 Q. Would it be fair to say that you and Tricia
25 knew what you were doing in growing marijuana and using

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Cross-Examination by Ms. Westby

1 marijuana was illegal, correct?
2 A. Yes.
3 Q. Did you know at the time the difference in
4 terms of weight between a misdemeanor and a felony
5 possession?
6 A. I believe so, yeah.
7 Q. What was it?
8 A. Three ounces. I believe above 3 ounces would
9 be a felony, and below would be a misdemeanor.
10 Q. Okay.
11 MS. WESTBY: I don't think I have anything
12 else.
13 CROSS EXAMINATION
14 BY MR. GOSMAN:
15 Q. I do have a few questions.
16 Let's go back to that evening when the
17 warrant was served. And I'd like to talk about when
18 you left your home that afternoon to go to your
19 father's.
20 A. Okay.
21 Q. Approximately what time was that?
22 A. What time was the warrant? It was about
23 9:00. I was probably over there at about 7-ish, 7:30.
24 Q. Somewhere between 7:00 and 7:30?
25 A. Yeah. Maybe 8:00. Between 7:00 and 8:00, I

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Cross-Examination by Mr. Gosman

1 would say. I don't remember exactly.
2 Q. Did you notice an unmarked car that was
3 parked in a sort of a vacant lot across the street from
4 the house and off to the east a little bit?
5 MR. THOMPSON: Objection as to form.
6 BY MR. GOSMAN:
7 Q. Officer Blackmore was surveilling the
8 residence starting somewhere in that timeframe. And he
9 drew a map.
10 MR. GOSMAN: Could we take a moment here and
11 pull up Blackmore's exhibit?
12 BY MR. GOSMAN:
13 Q. Bret, I'm handing you Exhibit 58, and it
14 shows the approximate location of the house, which is
15 the big box next to the north side.
16 (Exhibit 58 identified)
17 THE WITNESS: Okay
18 BY MR. GOSMAN:
19 Q. And then it shows the location of
20 Officer Blackmore's vehicle, which was down the street
21 and apparently in a lot. It says "parked in lot." So
22 apparently there was a vacant lot to the east and to
23 the north --
24 A. Yeah, right across the street. Yeah, there
25 was a Farmers Insurance that just moved.

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Cross-Examination by Mr. Gosman

1 Q. And when you left your home to go to your
2 father's, did you drive by that --
3 A. I would have had to have. Even from here, I
4 could see that.
5 Q. Okay. Do you remember noticing a vehicle
6 there that night?
7 A. No. At that point it was pretty much empty
8 all the time because Farmers Insurance had moved
9 downtown.
10 Q. Okay. And so sometime between 7:00 and 7:30
11 you went to your father's house.
12 A. Yes.
13 Q. What vehicle were you driving?
14 A. '99 Chevy Blazer.
15 Q. What color was it?
16 A. Dark tan.
17 Q. And was Tricia with you?
18 A. No.
19 Q. Did you pull up to the house just prior to
20 your leaving the house?
21 MR. THOMPSON: Objection as to form.
22 BY MR. GOSMAN:
23 Q. Did you drive -- had you come to the house
24 just before you left to go to your father's?
25 A. Oh, no. You mean as far as going to my

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1 house? I had been at my house for quite some time
2 before I left, all day.
3 Q. Had you left at all during the course of the
4 day before you went to your father's?
5 A. As far as I know, no, I didn't.
6 Q. And were you aware of another vehicle that
7 arrived at your house with two guests, one of a male
8 and another, either a child or a very small adult?
9 A. No.
10 Q. And about what time was it that the police
11 officers contacted your father that night at his house?
12 A. Boy, it must have been shortly after --
13 probably 9:30-ish, 10-ish. I don't recall exactly.
14 Q. And they talked to your father, correct?
15 A. Yes.
16 Q. And did they then arrive at the home a short
17 time later?
18 A. Yes.
19 Q. And do you know how many officers arrived?
20 A. I don't know how many were outside. I
21 believe only three came.
22 Q. And did you go outside to meet them?
23 A. No.
24 Q. Was the front door open?
25 A. It was unlocked.

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1 Q. Was the -- it's February. The door was
2 probably not open.
3 A. Yeah.
4 Q. Did you invite the officers in or did your
5 father invite the officers in?
6 A. My father did.
7 Q. And do you know who the officers were that
8 came into the house?
9 A. I don't, no. I had never met any of these
10 police officers in my life before.
11 Q. Okay. There were how many, again?
12 A. Three.
13 Q. And did they have their weapons drawn?
14 A. No.
15 Q. What was their demeanor when they came to the
16 house?
17 A. It was similar to that of a friend coming
18 over except dressed in gear.
19 Q. And --
20 A. -- like a friend of my father's.
21 Q. And how long did they visit with your father?
22 A. Before I left, five, ten minutes.
23 Q. So they were there in the house with you
24 present for five to ten minutes?
25 A. Yes.

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1 Q. And did they direct any questions towards you
2 about the search?
3 A. They didn't talk to me at all.
4 Q. Did they -- when they arrived at your house,
5 did they direct any commands to you whatsoever in that
6 first five to ten minutes?
7 A. No. They didn't even look at me, as far as I
8 recollect.
9 Q. And --
10 A. They could see me.
11 Q. When they told you that they were going to
12 take you, explain how that happened.
13 A. After they were done talking to my dad, they
14 said, we're going to have to take you. And I said
15 okay. And I stood up, and I believe I was handcuffed
16 either in the house or outside. I can't remember. It
17 was kind of a lot of thoughts going through the mind at
18 that time.
19 And then one officer had quickly gave me a
20 quick pat down. I don't even hardly remember. And
21 then the -- another officer had kind of run his hands
22 quickly through the couch I was sitting on.
23 Q. And then you were taken to the police
24 station?
25 A. Yes.

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1 Q. At the police station you were interviewed by
2 one -- was it one of the officers that was with you?
3 A. I don't know. I know I was interviewed by
4 Dave Brown.
5 Q. Okay.
6 A. That's all I know. I don't know if he was
7 there or not. Like I said, before I was interviewed by
8 him, I literally didn't know the names or faces of any
9 of these officers.
10 Q. And I think we're maybe on that Exhibit 39.
11 I want you to go ahead and go through that exhibit and
12 I want you to tell me in your own words what happened
13 that night.
14 Let's refer to the exhibit. If there's any
15 inaccuracies in it, I want you to call them out to me,
16 and explain the circumstances of the interview that you
17 gave.
18 MR. THOMPSON: Objection as to form.
19 THE WITNESS: First of all, it says,
20 Wachsmuth stated that most pills are in his and what --
21 in his -- are his and what he has are legal.
22 They were all mine and legal.
23 Disability, Wachsmuth stated that he takes
24 Paxil.
25 It's supposed to say Lorazepam.

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1 Carisoprodol, hydrocodone, a Celebrex-type
2 drug. And it says "and Oxycontin," which is a complete
3 lie. I never said that to him.
4 BY MR. GOSMAN:
5 Q. Go ahead. Continue.
6 A. "Wachsmuth denied doing prescription drugs."
7 And then, again, like I said earlier, as far
8 as the statement from whatever we're supposed to call
9 him, I don't remember anything about meth pipes or
10 illegal guns. It was about pot.
11 'Cause why would he say that to me? He knew
12 I didn't have any of it.
13 And also, it says, "I asked him why he had
14 guns laying around, and he stated that he was afraid of
15 Josh Bessler."
16 That is incorrect. I never said that.
17 And I didn't go to my father's house to work
18 on my vehicle. That's pretty insignificant, but...
19 And also, I did not mention to my father that
20 Bessler had called me.
21 And my father didn't say anything. That just
22 doesn't -- no, that's false. That's it.
23 Q. Okay. You discussed with Officer Brown --
24 you told Officer Brown that you had received a call
25 from Josh Bessler, correct?

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1 A. Yes.
2 Q. And what was his reaction to that?
3 A. Surprise.
4 Q. Did he act like he knew that before?
5 A. He did not act like he knew it. He was very
6 surprised.
7 Q. Did he show any particular interest in that
8 piece of information?
9 A. Yeah. That's when they were going nuts about
10 wanting to see if they could get a search warrant for
11 my phone or what they needed to do to look at it. And
12 I guess that I did -- I believe that I gave them my
13 phone. And it says it showed up restricted, but yet, I
14 deleted the message, so they couldn't listen to it.
15 Q. Let's go ahead and have you turn briefly now
16 to -- let's see. It's the inventory that was taken at
17 the house. And I'm just not sure whether it said, but
18 did you -- did you see any -- is there anything there
19 in the -- I think from the testimony, as I recollect
20 it, one of the officers indicated that he had found a
21 small cocaine package in your bedroom.
22 Do you see that on the inventory there?
23 MR. THOMPSON: What exhibit are you referring
24 to, Counsel?
25 MR. GOSMAN: It's 23.

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1 MS. WESTBY: Object to the form of the
2 question.
3 MR. THOMPSON: Join.
4 THE WITNESS: No, it's not there.
5 BY MR. GOSMAN:
6 Q. Go ahead and take a look through the rest of
7 that document and see if you can see.
8 A. No, it's nowhere.
9 (Exhibit 43A identified)
10 BY MR. GOSMAN:
11 Q. Okay. I need just a moment here 'cause...
12 all right. See, I'm looking at one of the photographs
13 from Exhibit 43A, and I cannot identify it by number
14 since it's not Bates stamped, but it's a picture of a
15 pill bottle with your father's name on it. Do you know
16 what that medication was?
17 A. Yep.
18 Q. What was it?
19 A. Flexeril.
20 Q. And what was Flexeril, if you know?
21 A. Muscle relaxer.
22 Q. And do you know how that bottle came to be at
23 your house?
24 A. Yeah, my dad was helping me work on my truck
25 in the garage. We were doing the timing chain gasket.

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1 And he was obviously in pain, took one, went into the
2 house to grab water, took the last one there and must
3 have left it behind.
4 Q. Have you ever -- do you take Flexeril?
5 A. I have before been prescribed it for my back,
6 but I wasn't currently at the time, I don't believe.
7 Q. Let me ask you to take a look at this
8 photograph here.
9 Can you identify that, and this is, again,
10 from Exhibit 43A.
11 A. Looks like a cut teddy bear to me.
12 Q. Okay. And was that the condition of the
13 teddy bear as you knew it when those bears were placed
14 in the box?
15 A. I don't think so. I think that the stuffing
16 wasn't pulled out. Maybe it was, but I don't think so.
17 Q. Can you tell where this photograph was taken
18 of your father's pill bottle?
19 A. If it was taken at my father's?
20 Q. No, can you tell where it was taken in the
21 house?
22 A. I don't know. No, I can't tell.
23 Q. Looks like there's some letters underneath.
24 Where would you normally keep the letters?
25 A. In the kitchen. And the computer desk was in

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1 the kitchen. That's where I paid the bills. Most of
2 my bills were online. I set all my bills there.
3 Q. I think this goes here.
4 Did you have any cocaine in the house?
5 A. No.
6 Q. I believe the officer who said you did
7 indicated it was found under your bed.
8 Would Josh Bessler have had access to your
9 bed in your master bedroom?
10 A. I'm sure he did.
11 Q. All right. I'll tell you what, if I need to
12 track that picture down, I will do it, and we'll take
13 care of it later.
14 Let me hand you what we have marked as
15 Plaintiff's Exhibit 47. I'm going to ask you if you
16 know what those photographs are?
17 (Exhibit 47 identified)
18 THE WITNESS: Yeah, it's my brother and one
19 of his friends.
20 BY MR. GOSMAN:
21 Q. Okay. Who is his friend?
22 A. You know, I don't know. I've never met her.
23 Q. Did you ever pose with your brother Shawn
24 like that in body armor with a --
25 A. Never.

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1 Q. -- assault rifle?
2 A. Never. As a matter of fact, when these were
3 taken, I was in Minnesota. I didn't know about them
4 until they were brought up here.
5 MR. GOSMAN: Okay. I don't believe I have
6 any further questions.
7 MR. THOMPSON: Couple follow-up.
8 REDIRECT EXAMINATION
9 BY MR. THOMPSON:
10 Q. The photographs that Mr. Gosman just showed
11 you, did you give those to Mr. Gosman?
12 A. No.
13 Q. You've never seen those before today?
14 A. No, I've seen them before today. I saw them
15 a couple weeks ago after it got brought up here, and my
16 brother printed them off his MySpace page.
17 Q. Is your brother -- where is your brother at
18 now?
19 A. Missouri, Columbia -- Columbus, one of the
20 two.
21 Q. And he had these photographs on his computer
22 that he has in Missouri?
23 A. Well, he has them on his MySpace page
24 currently.
25 Q. Do you know when the photographs were taken?

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Redirect Examination by Mr. Thompson

1 A. Sometime in '06. It was June 9th, 2006. I
2 believe.
3 Q. Why did you delete the message on your phone?
4 A. You know, it was just one of them kind of
5 things that it bugged me. It kind of surprised me to
6 hear that, so I just -- with all the -- I mean, he
7 called very angrily. So I figured, you know what, this
8 weird guy calling up and saying weird stuff. It's
9 gone.
10 Q. You do admit that he told you that he had
11 turned you in?
12 A. Yeah.
13 Q. And that he turned you in to the cops?
14 A. Yes.
15 Q. After you received that phone call, why did
16 you leave your wife alone at home?
17 A. Because I didn't think that the cops -- I
18 thought cops did investigations, I didn't think they
19 just busted down doors.
20 Q. Let me have you turn to Deposition
21 Exhibit 44.
22 (Exhibit 44 identified)
23 THE WITNESS: Is that in here?
24 BY MR. THOMPSON:
25 Q. Yes, sir.

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Redirect Examination by Mr. Thompson

1 What is the -- this picture a photograph of?
2 A. A box with -- looks like my wife's driver's
3 license, pill jar, some other miscellaneous things.
4 Q. Where is that box located at in the house?
5 A. Looks like the bedroom.
6 Q. Your bedroom?
7 A. Yes.
8 Q. So this would have been something that would
9 have been in the dresser drawer in the bedroom?
10 A. No. I really don't know where. This is my
11 wife's stuff. It's my wife's driver's license.
12 Q. Okay. I have no further questions for you.
13 MR. THOMPSON: Ms. Westby?
14 RECROSS-EXAMINATION
15 BY MS. WESTBY:
16 Q. Are there any pictures of you holding any
17 kind of weapon?
18 MR. GOSMAN: Object to the form of the
19 question.
20 THE WITNESS: When I was pheasant hunting, my
21 sister-in-law took pictures, so I was holding shotgun
22 shooting pheasants. That's it.
23 BY MS. WESTBY:
24 Q. What kind of clothing were you wearing?
25 A. Orange. Typical pheasant hunting clothing.

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Recross-Examination by Ms. Westby

1 Q. Were you by yourself?
2 A. No, I was with my brother and my father and
3 my sister-in-law.
4 Q. The pictures, who is in the pictures?
5 A. Me, my brother. They were just as -- my
6 sister-in-law was behind us taking photos as we were
7 hunting. She was just there to take scenery photos
8 pretty much.
9 Q. Have those ever been on your brother's
10 MySpace page?
11 A. No.
12 Q. Have they been anywhere on anybody's MySpace
13 page that you're aware of?
14 A. No.
15 Q. Not that you're aware of --
16 A. No, they haven't.
17 Q. -- or do you know for sure?
18 A. I know for sure.
19 Q. Can you please also give those to your
20 attorney as well?
21 A. Okay. No problem.
22 MR. THOMPSON: I think we're done.
23 MR. GOSMAN: No, I do have another question.
24 RECROSS-EXAMINATION
25

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Recross-Examination by Mr. Gosman

1 BY MR. GOSMAN:
2 Q. Regarding Exhibit 44, you'll notice that
3 we've drawn in ink a circle around a clear plastic bag.
4 Do you have any idea what that is?
5 A. Me?
6 Q. Yes.
7 A. Yes.
8 Q. What is it?
9 A. A jewelry bag for body jewelry.
10 Q. For body jewelry?
11 A. Yeah, piercings, nose piercings.
12 Q. Does -- does it appear to you, looking at
13 that picture, that it has any cocaine residue?
14 A. No.
15 MR. THOMPSON: Objection as to form.
16 MS. WESTBY: Join.
17 BY MR. GOSMAN:
18 Q. Do you know -- did your wife keep her
19 piercings in a pouch like this?
20 A. When they were new, yeah. Or ones that she
21 wasn't using anymore or didn't like.
22 Q. Okay. That's it. Thank you very much.
23 MR. GOSMAN: We'll read and sign.
24 (Proceedings concluded at
25 10:45 a.m., November 24, 2010)

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Recross-Examination by Mr. Gosman

1 DEPONENT'S CERTIFICATE

2 I, BRET WACHSMUTH, do hereby certify, under
3 penalty of perjury, that I have read the foregoing
4 transcript of my testimony consisting of 104 pages,
5 taken on November 24, 2010 and that the same is, with
6 any changes noted below, a full, true and correct
7 record of my deposition.

8 PAGE LINE CORRECTION REASON FOR CORRECTION

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20 _____
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22
23
24 _____ BRET WACHSMUTH Date
25

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Recross-Examination by Mr. Gosman

1 CERTIFICATE

2 I, VONNI R. BRAY, Registered Professional
3 Reporter, and Notary Public for the State of Montana,
4 do hereby certify that BRET WACHSMUTH was by me first
5 duly sworn to testify to the truth, the whole truth,
6 and nothing but the truth;

7 That the foregoing transcript, consisting of
8 105 pages, is a true record of the testimony given by
9 said deponent, together with all other proceedings
10 herein contained.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 11th day of December, 2010.

13
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16
17
18
19 
20

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25

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